The Legal Status of Following a Madhab

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TRANSLATOR'S INTRODUCTION

This monograph was originally an extempore in Urdu titled *'Taqleed Ki Shara'ee Hesiyat* ('Taqleed's Position in Islam") and is presented here for the first time in the English language. It is an exposition of the position amongst classical scholars to Taqleed in particular and the following of Madhab (legal school) in general.

The author, Justice Taqi Uthmani, is a world-renowned scholar, an acknowledged authority in Fiqh, Ahadith, Tafseer and Islamic economics. He has authored numerous titles on these topics in Arabic, Urdu and English. He is presently the deputy chairman for the Islamic Fiqh Academy (Jeddah), Judge of the Supreme Court of Pakistan and chair of numerous Shari'ah supervisory boards for many banks throughout the Islamic world. He is also the vice president of Darul Uloom, Karachi, where he presently lectures.

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PROLOGUE

Much has been written on the subject of "Taqleed and Ijtihad" - or following a Madhab and legal discretion. In fact, I was adamant that I could add nothing further to this vast subject. However, the article arose quite coincidentally.

In 1963, the respected brother Mahirul Qadri, the editor of *Faran* the monthly journal, asked me to pen an article on the issue of Taqleed due to some immediate and pressing concerns. Like my dear respected father, Mufti Shafi, I do not like to engage in controversy. However, I wrote a brief tract on the subject with the view that the issues are made clear so that those who endeavor to precipitate strife amongst Muslims by calling each other infidels and polytheists should be asked to re-evaluate their conclusions. The article was published in *'Faran'* in May 1963 and was received with extra ordinary popularity, it became published in several magazines throughout the Asian subcontinent, infact it was published as a separate book in India.

Surprisingly, even though the approach of my article was far from being polemical those who are hostile to following Imams of Ijtihad, criticized the work. One of those criticisms was written by Maulana Muhammed Ismail Salfi and was published in thirteen issues of *Al-I'tisaam.* This criticism later became the basis for two of his books namely, *The movement for independence of thought* and *The Revivalists Efforts of Shah Wulliyullah.* The second criticism was published in *The Exposition: An answer to Taqleed.* This was written by a person who openly condemned the Imams of Ijtihad as fabricators of Islamic Law; their followers as infidels and polytheists and denounced Islamic jurisprudence as a concoction. The third criticism was written in Hyderabad, India and published in a local monthly. But since my intentions were not to get tangled into a bitter or lengthy debate. I did not see it fit to prolong the discussion and consequently withdrew from writing on the issue for thirteen years.

This article was well received, many desired that it should be published as a separate book as was done in India. As a result I decided to revise certain areas so that critics could be answered and doubts removed. Academic contentions are also examined. As I am not in favor of debating. I have included the replies to such contentions at various places as part of the overall response.

To reiterate the purpose of this book is not to create an atmosphere of disputation but to clarify the position taken by the majority of Muslims for the best part of thirteen centuries on Taqleed - which is to follow the Imams of Ijtihad. By avoiding the extremes, the goal is to show the balanced position which the majority of the scholars from the Ahle Sunnah wal Jama'ah have adopted. Therefore, this tract should be read with a view to study the scholastic evidence of the issue, rather than to dispute upon the issue void of knowledge. There is a great deal of propaganda against Taqleed. I hope that this treatise helps to make clear the issue of Taqleed to the doubtful.

"My reconciliation is with Allah alone.

It is Him that I trust and to Him that I turn."

Mohammed Taqi Uthmani

Servant of Darul Uloom, Karachi

Friday Night, 4th Jamadiul Thani, 1396

THE NATURE OF TAQLEED

No Muslim can deny that Islam's real message is to obey Allah alone. Emphasis has been placed upon following the Prophet Muhammed *sallalahu alaihi wa sallam* because he represented Allah's commandments through his words and actions. Allah and His Messenger have to be unequivocally followed in what is halal (permissible) and what is haram (forbidden): what is allowed and what is not. Whoever believes in following anyone besides Allah and His Messenger and regards that person as independent (of Allah and His Messenger) is surely outside the fold of Islam. Thus, every Muslim should attempt to follow the commandments of the Qur'an and Sunnah (the traditions and norms of the Prophet *sallalahu alaihi wa sallam*). There are certain commandments in the Qur'an and Sunnah which a lay person can understand. Such commandments are not intricate, ambiguous or contradictory. Understanding these commandments and their implications can be effortlessly achieved without confusion. For instance, Allah says:

"Do not back bite" (Surah Al-Hujuraat: 12)

Anyone familiar with the Arabic language will immediately understand the verse, since there is no ambiguity in the statement, and nor does it clash with any other Islamic value it is readily understood.

Likewise, the Prophet *sallalahu alaihi wa sallam* said: "*There is no preference of an Arab over a non-Arab*"

This Hadith is also clear and uncomplicated. A rudimentary knowledge of Arabic would enable its understanding. Conversely, there are many commandments in the Qura'n and Sunnah which are ambiguous. In fact, there are some statements which seem to contradict other verses of the Qura'n or a Hadith. For Example, the Quran says:

"And those women who are divorced should wait for three 'Quruu'." (Surah Al-Baqarah:228)

The verse has stipulated that the waiting period for a divorced woman, in order to remarry, is three '*Quruu*'. The word Quruu in the Arabic language is used to denote both the monthly menstruation period (Haydh) and the time in between the monthly period (Tuhr). If the former meaning were taken, then the rule would be that a divorced woman should wait for three monthly menstruation periods (Haydh) to elapse. If the later meaning is taken, the rule would be that the divorced woman should wait until three months in between her monthly menstruation period (Tuhr) have expired. The question is which one of these two meanings applies. Similarly a Hadith of the Prophet *sallalahu alaihi wa sallam* says:

"*Whoever does not stop the practice of Mukhabarah should hear the proclamation of war (against him) for Allah and His messenger*."

Mukhabrah is a specific kind of farming in which a landlord makes an agreement and a farmer, who is hired by him, to cultivate his land. The agreement stipulates the amount of produce, which is to be divided by each party. There were several forms of Mukhabarah practiced during the time of the Prophet *sallalahu alaihi wa sallam*. This particular Hadith is brief and vague as to which particular kind of Mukhabarah is forbidden.

The Prophet *sallalahu alaihi wa sallam* said in another Hadith:

"*Whoever has an Imam, then the Imam's recitation is his recitation*."1

This seems to indicate while the Imam is reciting in salaat, the follower should remain silent. However, another Hadith says:

"*There is no salaat for he who does not recite Surah Al-Fatiha*." 2

This seems to indicate that everyone should recite Surah Fatiha. The question arises whether the first Hadith should be taken as the primary source referring to the Imam or the one who offers salaat individually and the second Hadith explained as a corroborating evidence; or should we make the second Hadith the base and that the first Hadith refers to the Imam's recitation after he recites Surah Fatiha.

Needless to say from the above examples, the process of extrapolating rules from the Qura'n and Sunnah can be complicated. One solution is that we exercise our understanding and insight in such issues in order to make our judgments and rulings. Another solution could be that instead of making independent rulings ourselves, we look into what the predecessors ruled concerning these issues. After investigating the opinions of the scholars whom we know to be more qualified and more adept in these issues than ourselves, we rely on their understanding and insight and act according to their rulings. If we consider with fairness, from the two options (mentioned above), the former option (of exercising our own understanding) is fraught with difficulties, which will be examined later. The second option (of relying on the opinion of a scholar from the past) is much more cautious. This is so not merely because it seems like a humble approach but because it is an undeniable reality that we have very little resemblance with the scholars of the first Muslim era. We fall short of their knowledge, understanding, intelligence, memory, morals and piety. In addition, the scholars of the first era were close to the environment and time when the Qura'n was revealed which allowed understanding the Qura'n and Sunnah in its entirety. We, on the contrary, are so distant from the time when the Qura'n was revealed that we are not disposed to a comprehensive understanding of the Qur'an's background, to its environment, the social norms of that time and to the language of that era. The factors listed above are indispensable if anyone is to understand the Qura'n and Sunnah.

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1 Muwaata of Imam Muhammed, Page 96

2 Bukhari Vol. 1, Hadith no. 723

After considering all of these points, if we do not rely upon our own understanding but instead follow the opinion of a scholar of the past in matters which are ambiguous or complicated, then it will be said that we are following, or making Taqleed of that scholar. This is the essence of Taqleed. Taqleed of an Imam or a Mujtahid is only valid in areas where understanding a rule of the Qura'n and Sunnah is difficult or complicated, regardless of whether this is because an additional meaning may be drawn from the text or there is some intricacies in the text, or even if there seems to be a certain contradiction in the text. An absolute and conclusive text where there exists no ambiguity, brevity or apparent contradiction in the text of Quran or Sunnah, there is no Taqleed of any Imam or Mujtahid. The famous Hanafi jurist, Shaykh Abdul Ghani Al-Nablusi states:

The issues which are agreed upon - without any doubt and by necessity - do not require any Taqleed of any of the four Imams like the obligation of Salaat. Fasting, Zakaat and Hajj, etc. and like the prohibition of adultery and fornication, drinking wine, murder, stealing and usurping. The issues which are debated are the issues where Taqleed becomes necessary." 3

Shaykh Khatib Al-Baghdadi writes:

"As far as the Islamic rules are concerned, there are of two types. The first are those which are known by necessity to be part of the Deen of the Prophet *sallalahu alaihi wa sallam* like the five prayers, Zakaat, fasting in Ramadhan, Hajj; the prohibition of adultery, wine and so on. Taqleed is not allowed in these issues since they are such that everyone should know and understand. The second type are those rules which need to be understood and extrapolated such as the details of the rituals of worship, transactions and weddings, for example, Taqleed is allowed in these issues since Allah says:

"So ask the people of remembrance if you know not." (Surah Al-Nahl: 43)

If Taqleed was not allowed in these issues it would mean that everyone would have to learn these particulars (directly). This would cut off people from their work and livelihood; ruin crops and destroy cattle. Thus, this requirement [of learning these details] should be dropped." 4

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3 Khulasataul Tahqeeq fi Hukm at-Taqleed wa at-Talfeeq - page - 4 printed by Al-Yasheeq, Istanbul
4 Al-Faqih wal Mutafaqqihah - page 67, vol.2 printed by Darul Iftaa, Riyadh, Saudi Arabia 1389

The statements above clarify that following an Imam or a Mujtahid does not entail believing the Mujtahid to be an independent source of law (Shari'ah), who has to be followed in totality. Rather the idea is that the Quran and Sunnah should be followed, however, a particular Imam's understanding of the Qura'n and Sunnah is being followed. The Mujtahid is regarded as a commentator of the law and his interpretation is held as authoritative. This is why, Taqleed is not an issue in those rules, which are conclusive since the purpose of following Allah, and His Prophet *sallalahu alaihi wa sallam* is readily achieved without Taqleed. The Imam whose opinion is followed is regarded as an interpreter and not a lawmaker is in fact implied in the meaning of the word Taqleed itself. Ibn Humam and Ibn Nujaim, both define Taqleed thus:

"Taqleed is to follow the opinion of a person - whose opinion is not a proof in Islamic law without asking for his [the person followed] proof." 5

This statement has clarified the fact that a person who practices Taqleed (the Muqallid) does not hold the opinion of the one whom he follows (the Mujtahid) as a source of Islamic law because the sources for Islamic law are confined to the Qura'n and Sunnah (both Ijma and Qiyas [analogy] are derived from the Qura'n and Sunnah). The only reason why a Muqallid follows an Imam is because of the conviction that the Mujtahid has insights into the Qura'n and Sunnah (which he, the follower, does not possess) by which the Mujtahid is able to understand their meanings, in this regard the follower has relied upon the Imams' opinion. Perceived in this perspective Taqleed cannot in all fairness, perceived be equaled with shirk nor blind following. Believing that the Imam (Mujtahid) is a lawgiver and maker and to regard obedience to him as binding, this is most definitely an act of Shirk. To believe one as an interpreter of the law and trust his opinion rather then one's own is necessary, if one has not reached the level of a Mujtahid and indispensable in this age of scholastic bankruptcy.

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5 Tayseerul Tahreer by Amir Badshah Bukhari - page 246, vol. 4 printed in Egypt 1351 and Fathul Ghaffar, the commentary on Al-Manar, by Ibn Nujaim - page 39, vol 2 printed in Egypt 1355

Resorting to the Mujtahid (legal expert) is necessary to understand the complex interpretations of the Qura'n and Sunnah. Thus, there are no grounds to accuse those who practice Taqleed of following the Imams of Ijtihad rather than the Qura'n and Sunnah, rather Taqleed facilitates the following of the Qura'n and Sunnah. There are two types of Taqleed. In the first category, the follower does not appoint any one Imam or Mujtahid, but instead follows the opinion of one Imam in one issue and the opinion of another in a different issue. In the second type of Taqleed, the follower chooses the opinion of one particular Imam and Mujtahid and does not resort to anyone else besides him in any issue. The former is known as Taqleed in general and the latter is known as Taqleed of an individual. The essence of both types of Taqleed is nothing more than the fact that someone who does not have the academic capability to extract rules from the Qura'n and Sunnah chooses someone whom he regards as an expert in the interpretation of the Qura'n and Sunnah, relies upon his understanding and adheres to his opinion. The validity - if not the mandate - for this approach appears in numerous proofs from the Qura'n and Sunnah.

The concept of Taqleed in the Quran

Both classifications of Taqleed, in the form mentioned above, are found in the Quran. The following verses of the Quran demonstrates this:

Verse Number 1:

"O you who believe! Follow Allah; follow the Messenger and those of authority (Amr) amongst you." (Surah Al-Nisaa: 59)

That of authority (Amr) has been explained by some as Muslim rulers while others have viewed them as jurists. The latter view was the opinion of Abdullah ibn Abbas6, Mujahid, `Ataa ibn Abi Rabah, `Ataa ibn Saib, Hasan of Basra, Abu 'Aliyah and many others. After substantiating the proofs for this second view, Imam Razi gives preference to it and writes:

"So taking those of Amr to mean scholars is more appropriate." 7

Imam Abu Bakr Jassas position is that there is no contradiction between the two opinions. In fact, both are implied. Rulers should be followed in political matters and jurists should be followed in legal issues. 8

Imam Ibn Qayyim says that following the rulers is in effect following the scholars since rulers are also required to follow scholars in legal issues. Hence, "...following rulers is subject to following scholars." 9

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6 This explanation of Abdullah ibn Abbas has been narrated from Mu'awiyah ibn Salah from Ali ibn Talha which is regarded as a very sound chain (Ibn Jarir Vol. 5 Page 88 c.f. Al-Itqaan: Number 80)

7 Tafseer Kabir: Vol 3, page 334

8 Ahkaamul Qura'n, by Jassas. Vol.2, page 256

9 'Ilaamul Muqi'een, by Ibn Qayyim. Vol.1, page 7

In short, this verse requires Muslims to follow Allah and His messenger and those scholars and jurists who interpret the primary sources. The legal term for this following is Taqleed. These remain the query regarding the remainder of the verse:

"**And if you dispute, then refer it to Allah and the Messenger if you really do believe in Allah and in the Last Day**." (Surah Al-Nisaa:59)

Based on the second view of those of Amr (to mean jurists and scholars), the address in the verse would be a separate command to the Mujtahids (the legal experts). Justifying the interpretation of those with Amr as jurists, Imam Abu Bakr Jassas says: "Allah's statement subsequently "if you dispute..." prove that those of Amr are indeed jurists because He has ordered everyone else to follow them and then proceeded to say that "if you dispute.....". Hence Allah has ordered those of Amr to refer the disputed issue to the Book of Allah and the traditions of the Prophet. The Lay person is not a person of knowledge, he is not of this caliber. The lay person would be unaware of how to refer the disputed issue to the Book of Allah and to Sunnah and how their proofs would apply to situations and events. Thus, it is established that the second command, is for the scholars." 10

The famous scholar of the Ahle Hadith, Shaykh Nawwab Siddiq Hasan Khan Sahib has also acknowledged that the address in this statement ("If you dispute....") is to the Mujtahids. He writes in his Tafseer: "It is apparent that this is a separate and a new address directed towards the Mujtahids." 11

It is not valid to conclude that those who are inept of Ijtehad should refer directly to Qur'an and Sunnah in disputed issues. In reality, the command in the first part of the verse (to follow those of Amr) is for those people who cannot extract any rules from the Quran and Sunnah directly. They are required to follow the Quran and Sunnah by asking those of Amr (meaning jurists) and following their guidance. The second statement is exclusively for the Mujtahids that is to say disputed issues should be referred to the Quran and Sunnah. The Mujtahids should exercise their skills of legal judgment and extract rules. So there are in fact two commands, the first statement is to those who adopt Taqleed and the second is directed to the Mujtahids to practice Ijtihad.

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10 Ahkaamul Qura'n vol. 2, page 257

11 Tafseer of Fathul Bayan - vol. 2 , page 308, printed by Al-'Asimah, Cairo

Verse Number 2.

"And when there comes to them a matter concerning (public) safety or fear, they relay it. If they had only referred it to the Messenger and to those of authority (Amr), those who can investigate and extract (information) among them would know (the rumor's validity)...." (Surah Al-Nisaa: 83)

The background to this verse is that the hypocrites of Madinah would spread rumors regarding war and peace. Simple-minded Muslims would believe these rumors and exacerbate the situation, creating an atmosphere of insecurity and panic in the city. The verse quoted above prevented Muslims from taking this approach and advised them to refer news of war and peace to those of Amr and not to spread rumors. Thus, capable individuals investigating the rumors would be able to reach the truth of the issue and inform others concerned. The role of the lay person was not to take any action except to refer such rumors and reports to those of Amr.

Although this verse was revealed for a specific reason - it is very well established in the principles of Tafseer and jurisprudence that in extracting rules and laws from specific circumstances of revelation, the specific details gives way to the general meaning of the text - such a general principle is contained in the verse quoted above. The principle is that: Those who do not possess the tools of investigation should refer to those who can. This is precisely Taqleed.

Imam Razi writes concerning this verse:

"So it is established that Istinbaat [the legal process of extracting rules from the Quran and Sunnah] is a proof. Analogy is either Istinbaat in itself or is included in it. So analogy (Qiyas) should also be a proof. This verse denotes several rules. The first is that there are some incidents and issues, which are not apparent from (Divine) text. The second is that Istinbaat is a proof. The third is that a lay person should follow scholars in the rules of events and in issues" [12]

Certain people have objected to this line of reasoning claiming that this verse is peculiar to the state of war and should not be analogous to a state of peace.[13] A response has already been furnished previously to this question that specific circumstances of the verse extend to the general principles of the verse. Imam Razi writes:

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12 Tafseer Kabir - vol. 3, page 272

13 Tahreeke Azadi Fikr, by Maulana Muhammed Ismail Salfi - page 31

"Allah's statement: `And when there comes to them a matter....' Includes all affairs relating to war and to any other incident relating to Islamic Law. This is because the states of war and peace include very legal command. Hence there is nothing in the verse which restricts the command to the state of war only." 14

Imam Abu Bakr Jassas has also given a similar detailed answer to this question, he has also refuted many doubts which relate to this question.15 This is the reason why the famous scholar of the Ahle Hadith, Nawwab Siddiq has allowed Qiyas (analogy) giving his reasoning based on this verse:

"There is a hint in this verse to the permissibility of Qiyas and that there are some issues of knowledge which can be perceived by intellectual deduction." 16

If there is no guidance in the verse regarding the state of peace, how would substantiating Qiyas from the verse be permissible?

Verse Number 3

"....If a contingent from every expedition remained behind in order to understand religion (Deen), and so that they could admonish their people when they return to them (from war) that thus they (may learn to) guard themselves (against evil)." (Surah Al-Taubah : 122)

The verse supports that not all Muslims should go out and become preoccupied in jihad. There should be a group who devote themselves exclusively to learning and understand Deen so that they can teach Islamic rules and regulations to those who are not able to dedicate themselves to learning. This verse has ordered those who learn and understand, to impart knowledge of Islamic law to others and it has also instructed others to act upon the instructions to avoid the disobedience of Allah. Imam Abu Bakr Jassas comments on this verse:

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14 Tafseer Kabir - vol. 3, page 273

15 Ahkamul Qura'n, by Jassas - vol. 2 page 63

16 Tafseer of Fathul Bayan, by Nawwab Siddiq vol. 2, page 33

"So Allah has commanded people (who do not learn) to take heed of the scholars' warnings and to act upon their advice." 17

Verse Number 4.

"....**So, if you do not know, ask those of remembrance**." (Surah Al Nahl:43)

There is an academic principle in this verse, which is that those who are not experts in a field should resort to seeking advice from those who are and act accordingly. Shaykh Aloosi writes in the commentary of this verse:

"This verse has been used to prove that referring to scholars is necessary in cases where one does not have knowledge of the issue in question. Imam Suyuti in his `Ikleel' writes that this verse has been used to prove the point that the lay person may follow another Imam [Make Taqleed of] in details of Islamic Law." 18

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17 Ahkamul Qura'n, by Jassas - vol. 2 page 262

18 Ruhul Ma'ani - vol. 14, page 148

The question often raised concerning this verse is that it pertains to a specific incident; the polythesists denied the prophethood of Muhammad *sallalahu alaihi wa sallam* and they would mockingly request as to why no angel was sent as a Messenger. In reply the following verse was revealed:

"**And We have not sent anyone before you except that they are men (humans) to whom We revealed. So, if you do not know ask those of remembrance**." (Surah Nahl : 43)

Some commentators take '.... Those of remembrance (Dhikr)' to mean the scholars of the People of Book. Others claim that it refers to the people of Book who were present during the era of the Prophet. Few other scholars believe it is in reference to the `Ahle Quran' [People of the Quran], the Muslims. Whatever the meaning of the verse people were aware of the fact that Prophets were human beings and not angels. It is claimed that in this context of the verse has no relation with Taqleed or Ijtihad. However, Taqleed is implied in this verse. The command to '...ask those of remembrance' implies the principle that `every unlearned person (or non-expert) should refer to the one who knows'. The verse directs towards following qualified scholarship and a case of Taqleed is clearly established from this verse. As previously mentioned, the salient principle while interpreting the Quran and Sunnah is that `the consideration for the general meaning of the text is not limited to its specific background incident.' Although the specific background incident pertains to the polytheists of Makkah, the unrestricted wording of the verse is still applicable and considered. Khatib Al-Baghdadi writes:

"As for the question; who is allowed to follow (and make Taqleed)? It is the lay person who does not have the tools to understand the laws of Islam. The lay person is allowed to follow a scholar and act upon his advice. Allah says:

"So, if you do not know, ask those of remembrance."
After quoting this verse Khatib has narrated with his chain of narrators from Amr bin Qais that in this verse, ".... Those of remembrance" are those of knowledge.[19]

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19 Al-Faqih wal Mutafaqqih, by Khatib of Baghdad - vol. 2, page 68, printed by Darul Iftaa, Saudi Arabia, 1389 Hijri

Taqleed in the Sunnah

The Sunnah, correspondingly to the verses in the Quran, are replete with references to Taqleed, a few are mentioned below.

Hudaifah said that the Prophet sallalahu alaihi wa sallam said "I do not know how long I will remain with you. So follow these two people (Who will remain) after me : Abu Bakr and Omar." (Tirmidhi, Ibn Majah and Ahmed) [20]

In this Hadith, special attention should be given to the word "Iqtidaa" (follow) which is used in the Arabic text. "Iqtidaa" is not used to mean following in the organizational sense, but rather it is used to refer to religious following. Ibn Manzoor, the famous expert on the Arabic language writes:

"The words Qudwah and Qidwah are used for people who are followed in their traditions. `Qudwah means Uswah (an example or a role model)'.[21]

This word has been used in the Quran to mean following prophets and good people in religious affairs: "**There are the ones whom We guided, so follow their guidance**." (Surah Al-An'aam: 90)

The following Hadith narrated during the last moments of the Prophet's life is ample proof of this approach:

"Abu Bakr was following the prayer of the Prophet and people were following the prayer of Abu Bakr." (Bukhari)

Imam Ahmed has narrated in his Musnad from Abu Wail:

"*I sat with Shaibah the son of Uthman who said: `Omar sat in this very place where you are sitting. Omar said: `sometimes I want to distribute every piece of gold and silver that is here in the Ka'bah. " I[Shaibah] asked him [Omar]: "Don't you have the authority to do so?" Omar said: "Your two companions [the Prophet and Abu Bakr] preceded you and did not do so. They are two great personalities who should be followed.*' [22]

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20 Mirqaatul Mafateeh - vol. 5, page 549

21 Lisaanul 'Arab - vol. 20, page 31 under the root word Qada

22 Musnad Ahmed - vol. 3, page 410

Imam Ahmed, also, narrated in his Musnad from Anas that the Prophet *sallalahu alaihi wa sallam* was sitting in a gathering and stated:

"*A person who is entitled to Paradise will shortly enter this gathering*"

So a person from the Ansaar entered. The next day, the same incident occurred and the third day, the same thing happened. Abdullah ibn Amr decided to follow the Ansaari one day and observe him. Abdullah assumed that the Ansaari was absorbed in worship during the night, but the only thing he noticed was that the Ansaari made some Dhikr (remembrance of Allah) and went to sleep until Fajr. In the morning Abdullah said to the Ansaari:

"I wanted to spend the night with you to see your actions so that I could follow you., But I did not see you excessive in worship." 23

In all of these instances, the word "Iqtidaa" has been used to mean following someone in a religious sense - especially in the first two Ahadith where the word has been used for Abu Bakr. The Hadith in question "...follow these two people after me...." Speaks about following Abu Bakr and Omar in religious issues, which is the essence of Taqleed.

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23 The Ansaari replied that although he did not do a lot of formal worship, he never kept any grudges against a muslim, nor did he envy anyone. Narrated with a sound chain in Musnad Ahmed - vol.3 page 166

Abdullah ibn Amr narrated that the Prophet *sallalahu alaihi wa sallam* said:

"*Allah will not snatch away knowledge abruptly from people, but rather He will snatch knowledge by removing scholars. This will happen to the extent that when no scholar remains, people will take ignorant leaders as their guides. These leaders will be asked and they will give opinions (Fatwas) without knowledge. So they will be misguided and they will misguide*." (Bukhari and Muslim)

This Hadith clearly states that giving religious and legal opinions (Fatwas) is the occupation of a scholar. People enquire concerning religious and legal issues and act according to the answers received. This is the gist of Taqleed. The Prophet *sallalahu alaihi wa sallam* foretold that there would come a time when scholars will become extinct and ignorant people will issue Fatwas. In this scenario, where there are no living scholars to refer to and hence there will remain none to extract rules from the Quran and Sunnah directly, what other process will there be for people to follow the Quran and Sunnah except to rely upon the decisions of previous scholars. This Hadith informs that as long as the Mujtahids remain, reference should be directed to them alone and when no scholar remains, instead of resorting to the incompetent and unqualified for solutions, Taqleed should be made of previous scholars.

Abu Hurairah said that the Prophet *sallalahu alaihi wa sallam* said: "*Whoever gives a Fatwa (legal opinion) without knowledge, the sin will be on the one who gives the Fatwa"* (Abu Dawood) 24

This Hadith is also very clear about the validity of Taqleed. If Taqleed was not permissible, then just as there is a sin for offering an opinion without knowledge and investigation, there should be an equal amount of burden on the person asking if he did not perserve to reach his own conclusions, but the Hadith states that the burden is on the one giving the Fatwa and not on the one asking. It indicates that the responsibility of a person who is not a scholar is to ask someone who has knowledge of the Quran and Sunnah. If that knowledgeable person gives him an erroneous Fatwa, the burden of sin is on the Mufti and not on the questioner.

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24 Mishkatul Masaabih - the chapater of knowledge, page 27

Ibrahim ibn Abdur Rahman narrated that the Prophet *sallalahu alaihi wa sallam* said:

"Reliable people from each succeeding generation will carry this knowledge. They (the reliable people) will refute the distortions of those who exaggerate and the (erroneous) explanations of the ignorant." (Bahiqi in Madkhal) 25

This Hadith condemns the erroneous explanations of the ignorant and makes it clear that the refutation of these explanations is the responsibility of the scholars. Again, this shows that those who do not possess the acumen of a Mujtahid should not venture into explaining the Quran and Sunnah according to their own understanding. Rather they should refer to the scholars in order to understand the correct meanings of the Quran and Sunnah. It is recognized that in order to explain the Quran and Sunnah a person needs to be extraordinarily qualified. Rudimentary knowledge of the Arabic language does not qualify one as a Mujtahid and hence such explanations by a non-professional would be regarded as spurious.

Imam Bukhari has narrated as a suspended narration and Imam Muslim has narrated with his chain of narrators from Abu Saeed Khudri that certain Companions made it a habit to join prayers late. The Prophet emphasized that they should come early and join the first row and then said:

"*Follow me (by observing what I do) and those who come after shall follow you (by observing what you do."*

This Hadith has multifarious interpretation, one possible interpretation is that those in the front row should observe what the Prophet is doing and follow him in prayers and those who are behind should follow the front row. A further possible meaning of this Hadith is that the Companions were advised to come early so that they could observe The Prophet's prayer in totality. Those who come after the Companions will learn their prayers by observing and following them. Ibn Hajar writes in the commentary of this Hadith:

"It is said that the meaning of this Hadith is that the Companions should learn the rules of Islam from the Prophet and those who follow the Companions (the Tabi'een) should follow the Companions and so on until the world comes to an end." 26

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25 ibid: page 28

26 Fathul Bari - vol. 2, page 171. Printed by Meeriyah 1300 H

Imam Ahmed narrates in his Musnad that Sahal ibn Sa'd narrated from his father that:

"*A woman came to the Prophet and said: "My husband has gone out in war and I used to follow him in his prayer when he prayed and in all other affairs. Show me an act which will match his act of jihad until he returns"* 27

In this Hadith, the lady has explicitly informed the Prophet that she follows her husband - not only in prayer but in all acts. The Prophet *sallalahu alaihi wa sallam* did not see any reason to rebuke her actions. Imam Tirmidhi narrates that Abdullah ibn Amr narrated from the Prophet *sallalahu alaihi wa sallam*:

"Whoever has two qualities in him, Allah will make him a grateful and patient person. (The first quality) Whoever looks towards someone who is higher than him in religion and follows him and (the second quality) whoever looks towards someone who is lower than him in the world and then praises Allah" 28

The Hadith praises the quality of adhering to others; there is not an inkling of disapproval within this Hadith to following the good in others.

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27 Musnad Ahmed - vol. 3, page 439 Al-Haithami has also narrated it (in Majma'uz Zawaid) and then says: Ahmed has narrated it from Dhabban ibn Faid whom Ibn Hatim has classifed as weak. Everyone in the chain is reliable. (Fathur Rabbani - vol 14, page 16)

28 Jami' Tirmidhi with Ibn Arabi's commentary - vol. 9, page 31

THE ERA OF THE COMPANIONS AND ABSOLUTE TAQLEED

Taqleed was prevalent during the era of the Companions. Companions who were not immersed with scholarship, or did not use their own judgment (Ijtihad) in certain issues would resort to the Companions who were acknowledged as jurists and act according to their advice. Evidence of absolute Taqleed and Taqleed of an individual during the successors era are copious, many volumes devoted entirely to this subject would not do it justice. However, for want of brevity here are a few examples of absolute Taqleed during the age of the successors.

Ibn Abbas narrates that Omar ibn Khattab gave a sermon at Jabiyah and said: *"0 people! If you want to know anything about the Qur'an, go to Obai ibn Ka'b. If you want to know about inheritance, go to Zaid ibn Thabit. If you want to know about Fiqh (what is halal and what is haram), go to Mu 'adh ibn Jabal. If you want to know about wealth, then come to me for Allah has made me a guardian and a distributor. " (Tabarani in Al-Awsat)* 29

Omar RA has addressed people in general in his Khutba (sermon) and advised that in matters of Tafseer, inheritance and Fiqh, they should refer to these distinguished scholars and learn from them. It is clear that not everyone is capable of understanding the proofs and rationale of the text. The instruction in this address is two folds. The first is that of those who are capable should refer to these scholars to understand the proofs and rationale and those who are not capable should refer to them for solutions and act upon their recommendations. Companions who did not regard themselves capable of extracting rules would refer to those who were jurists without investigating the proofs. They would merely follow their advice. The following is an example of this approach.

Salim ibn Abdullah narrated that Abdullah ibn Omar was asked about a person who owed another person some money and had to pay the loan at a fixed time. The creditor then agrees to forgive a portion of the loan if the debtor pays before the deadline. Ibn Omar disliked this agreement and forbade it.30 There is no explicit Hadith of the Prophet, which has been offered as proof. It is clear that this ruling was the personal judgment of Ibn Omar. So neither did Ibn Omar volunteer any proof, nor was any proof sought.

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29 Al-Haithami has mentioned that there is Sulaiman ibn Dawood ibn Hussain in the chain whom no one has mentioned. (Majma'uz Zawaid page 131). I (the author) would like to point out that Ibn abi Hatim has mentioned him (Al-Jarh wa Ta'adeel - vol. 2, part 111) and also Khatib in the History of Baghdad (vol. 10, page 62). Neither of them have either praised or discarded him

30 Muwaata of Imam Malik: page 279

Abdur Rahmaan narrated that he asked Ibn Sireen about entering public baths. Ibn Sireen said that Omar RA use to dislike the idea.31 Ibn Sireen - who was one of the most learned followers of the Companions - did not mention any proof except to say that Omar RA used to dislike the idea. This is despite the fact that there are several Hadith regarding the issue of public baths. Omar himself has a Hadith in this issue.

Sulaiman ibn Yasar said that Abu Ayyub Ansaari went for Hajj. When he reached a place called Naziyah - on the way to Makkah - he lost his camels - which were for sacrifice. He approached Omar on the Day of Sacrifice and mentioned his plight. Omar RA said: "Do what those who perform Umrah do (which is the Tawaf and Sa'ee) and then you will become halal [you may take off you Ihram]. Then, when you come for Hajj next year, perform your Hajj and offer whatever sacrifice you can offer." 32

Again, Abu Ayyub did not request Omar's proof and nor did Omar RA offer any. Abu Ayyub took his advice and acted accordingly.

Mus'ab ibn Sa'd said that his father (Sa'd ibn Abu Waqqas) - when praying in the masjid - would shorten his prayers and complete his ruku and sujood. And when praying at home, he used to lengthen his prayers and also his ruku and sujood. Mus'ab asked:

"Father, when in the masjid, you shorten your prayers and when at home you lengthen them. Why is this?" His father replied:
"My son, we are leaders and Imams who are followed by others." (Tabarani in Awsaat - the chain of narrators are sound) 33

The meaning of Sa'd's reply is that since people look towards their leaders, they would assume that lengthy prayers are obligatory and make such a practice an essential component of the prayer.

This narration demonstrates that the masses during the time of the Companions followed them, not only in their statements, but also in their actions. It is also clear that following an eminent companion proofs are not required and for this reason the Companions observed even the most meticulous details in their actions - such as not giving an incorrect impression that lengthy prayers are a religious duty.

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31 Transmitted by Musaddad (Matalibul 'Aaliyah, by Ibn Hajar - vol. 1, page 51)

32 Muwaata of Imam Malik: page

33 Al-Haithami in Majma'uz Zawaid - vol. 1, page 182

Omar ibn Khattab RA saw Talha ibn Obaidullah wearing a colored piece of cloth while he was in the state of Ihram. Omar RA asked him what he was wearing. Talha replied that it was made from fabric, which was not scented. [Unscented colored sheets for Ihram is permissible] Omar RA said;

"You are a group of leaders who are followed by other people. If an ignorant person saw this cloth he would presume that Talha ibn Obaidullah wore this type of cloth while he was in Ihram [and thus assume that even scented material was permissible]. Do not wear these colored garments." (Muwaata Imam Malik) 34

Likewise, Omar RA had advised Abdur Rahmaan ibn Auf RA to remove a certain type of socks, which he was wearing and said: "I implore you to remove them. I fear that others will look at you and follow your lead." 35

The previous three incidents adequately demonstrate that Companions were being followed in their actions and Fatwas. Following the Companions in actions did not require proof or reasoning, for this reason the Companions were very stringent concerning their actions and would emphasise others to be likewise.

Omar RA sent Abdullah ibn Mas'ood RA to Kufa and sent the following letter to the people of Kufa:

"I am sending Ammar ibn Yaasir as your governor and Abdullah ibn Mas'ood as your teacher and adviser. They are amongst the most noble of the Companions of the Prophet. They are also amongst those who participated at Badr. So follow them and listen to them."

Abdullah ibn Mas'ood explained some principles of ruling in cases and said:

"If anyone is faced with a case after today, he should judge according to the Qur'an. If there is a case where Quran has not ruled, then he should judge according to the Prophet. If a case appears where neither has ruled, then he should judge according to the rulings of the pious. If a case comes where no one has ruled, he should judge according to his own discretion." 36

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34 Also, Imam Ahmed in his Musnad - vol. 1, page 192

35 Al- Isti'aab, by Ibn Abdur Barr - vol. 2, page 315. Al-Isaabah, by Ibn Hajjar - vol 2, page 361 and 'Ilaamul Muqi'een by Ibn Qayyim - vol 2 page 171

36 Sunnan Nisaaai - vol. 2, page 305 and Sunnan of Darami - vol. 1, page 54

Abdullah ibn Masood RA has expressed four levels of ruling in this narration. The Quran and Sunnah, the decisions of the pious and individual judgment. The point which is evident in this order is that no one would assume that while preferring to the Quran first, necessarily entails ignoring the Sunnah, while referring to the Quran to understand its meaning. The consensus of the scholars is that the explanation of the Quran should be sought through the aid of the Sunnah. Not articulating this premise would open the door to many predicaments, for instance, no direct reference is given in the Quran to flogging or stoning an adulterer. To forsake stoning due this type of reasoning would be absurd and totally against the consensus of the Muslim community (Ummah).

Referring to the rulings of the pious entails that their opinions should be comprehended as subsidiary sources facilitating to establish the meaning of the Quran and Sunnah. On the contrary, their views should not be used except to understand the meaning of the Quran and Sunnah. Taqleed requires that while trying to determine and fix one meaning out of several possible meanings of a primary text - which is ambiguous - the view of a Mujtahid is employed. For instance the fact that Abdullah ibn Masood was addressing someone who was already appointed as a judge, shows that Taqleed is not only valid and necessary for a lay person alone, but also for a scholar who should not rely merely on his acumen. (The variance in the type of Taqleed a scholar makes and the type a non-scholar makes that will be explained shortly.) 37

Salim ibn Abdullah said that Ibn Omar did not recite behind the Imam. Salim asked Qasim ibn Muhammed about this and he replied:

"If you do not, then people who should be followed have also refrained from reciting behind the Imam. And if you do, then people who should be followed have also recited behind the Imam."

Salim said that Qasim was amongst those who did not recite.38

Qasim ibn Muhammed was one of the Seven Great scholars of Madinah and a famous follower of the Companions. Even a great jurist of his stature regarded following the opinion of another scholar as permissible (even though there was an apparent contradiction in the proofs of both views).

Ibn Sa'ad in his Tabaqat has recorded that someone enquired from Hasan of Basra whether he would drink water from a masjid which was provided as charity. Hasan said:

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37 The above explanation refutes all the questions raised by Ibn Qayyim in 'Ilamul Muqi'een - vol. 2, page 178 on trying to reason with this narration.

38 Muwaata of Imam Muhammed, page 96 - printed by Asahhul Mataabi'. One of the narrators is Osamah ibn Zaid of Madinah who was regarded as authentic by Yahya ibn Mu'een and Ibn 'Adi. Others have regarded him as a weak narrator. Hafiz in Taqreeb said that he is very truthful.

"Abu Bakr and Omar both drank from the water of Umme Sa'd - which was on the roadside. So what if I drink from this water?" 39

Of particular interest is the fact that Hasan's only proof was the action of the two companions. These were merely selected examples from the lives and statements of the Companions and their followers. Ibn Qayyim states that the Fatwas of more than 130 Companions have been recorded and memorized. Including those of women.40 These Fatwas include both where proof is offered from the Qur'an and Sunnah and in other instances where it is not. Examples for each approach have been presented above. For other examples, one may refer to *Muwatta* of Imam Malik; *Kitabul Aathaar* of Imam Abu Hanifa; *Musannaf* of Abdur Razzaq and of Ibn Abu Shaibah; the commentary of *Ma'aniul Aathaar* by Imam Tahawi and *Al-Mataalibul `Aaliyah* of Ibn Hajar.

TAQLEED OF AN INDIVIDUAL DURING THE TIME OF THE COMPANIONS AND THEIR FOLLOWERS

Companions did not make Taqleed rigidly adhering to one scholar in all issues but rather the Companions approached different scholars and adhered to the disparate Fatwas, which were received from the different scholars amongst the Companions. This is normally referred to as Taqleed in general. There are abundant references to Taqleed of a particular individual in the books of Sunnah. A few examples are offered below.

Imam Bukhari narrates from Ikrimah that the people of Madinah asked Ibn Abbas about a woman who - during Hajj - makes her first Tawaaf and then enters her menstrual period before she can make her final Tawaaf. Ibn Abbas told them that she could go home without completing her final tawaaf. The people of Madinah said:

"We will not take your opinion over the opinion of Zaid ibn Thabit." This narration is found in the Mu'ajjam of Isma'ili from Abdul Wahhab Thaqafi.

The words of the people of Madinah in this narration are : "We do not care whether you give us this Fatwa or you don't. Zaid ibn Thabit hold the opinion that this woman should not go home [but wait until she is able to complete the final tawaaf]." 41

Also, this narration is found in the *musnad* of Abu Dawood Tayalisi from Qatada where the words of the people of Madinah are:

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39 Kanzul Ummal - vol. 3, page 317

40 'Illamul Muqi'een - vol. 1, page 9

41 Fathul Bari - vol. 3, page 468 and Umtadul Qari - vol. 4, page 777

"We will not follow you, O Ibn Abbas as you go against the opinion of Zaid."

Ibn Abbas replied: "Ask your companion Umme Saleem when you reach Madinah [Whether my opinion is correct or not]" 42

Two points are clear from this dialogue between Ibn Abbas and the people of Madinah. The first is that the people of Madinah regarded and followed Zaid ibn Thabit as an authority. His opinion was given preference over any other scholar. In fact, the narration in the Mu'ajjam of Ismai'ili tells us that Ibn Abbas gave the people of Madinah proof of his Fatwa by referring them to Umme Saleem.43 Despite this proof, the people of Madinah still maintained that they trusted the opinion of Zaid ibn Thabit and his statement was proof enough. Ibn Abbas did not object to this behavior from the people of Madinah. He did not approach the people nor has anything different been narrated. He instructed them to return to Zaid and confirm the ruling with Umme Saleem. Zaid did confirm the opinion of Ibn Abbas with Umme Saleem and retracted his previous opinion. The latter part of the narration is confirmed in the books of Muslim, Nisaai, Baihaqi and others.44 Certain quarters contend that if the people of Madinah were among those who practiced Taqleed, why did they bother to confirm the Hadith from Umme Saleem?45

This contention is based on the misunderstanding that while making Taqleed of a certain Mujtahid, continuing research into the Quran and Sunnah is somehow forbidden or dormant. Those who reject Taqleed base many arguments on this misconception. The nature of Taqleed in essence is that a person who does not have the immediate tools to derive *Hukm Shari'ah* from the Qur'an and Sunnah directly relies upon the opinion of a Mujtahid and acts upon it. The concept of Taqleed does not hinder seeking knowledge of the Quran and Sunnah. This seeking of knowledge continues even whilst practicing Taqleed. For this reason hundreds of scholars - who practiced the Taqleed of an individual - continued to write commentaries of the Quran and Sunnah and expand their scholastic horizons. If during research an opinion of a certain Mujtahid was conclusively proven to be against the Quran and Sunnah, the "unsound" opinion would be relinquished and the stronger evidence would be adopted.

If a Muqallid (someone who follows a Mujtahid) finds that the opinion of his Imam is contrary to a Hadith, this is not necessarily antithetical to Taqleed. The narration in question, rather, prove that both Taqleed and constant examination and re-evaluation of primary evidence were both in vogue simultaneously. The people of Madinah took counsel from Zaid who confirmed the Hadith with Umme Saleem and retracted from his original position. This approach enabled reconciliation between a confirmed Hadith and the opinion of an Imam, but the key to this narration is the firm stand of the people of Madinah:

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42 Abu Dawood Tayalisi in his Musnad - page 229

43 The people of Madinah met with Ibn Abbas again and informed him that the Hadith (from Umme Saleem) was as he mentioned. Umtadul Qari - vol. 4, page 777

44 Fathul Bari - vol. 3, page 468/469

45 Tahreeke Azade Fikr, by Maulana Ismail Salfi - page 132

"We will not take your opinion over the opinion of Zaid ibn Thabit"

If this is not following (making Taqleed of) an individual, then it begs the question what is?

Imam Bukhari has narrated from Huzail ibn Shurahbail that some people asked Abu Musa Al-Ash'ari a question on inheritance. Abu Musa replied advising them to ask

Abdullah ibn Mas'ood. They did so and Abdullah gave them an answer, which was very different from that of Abu Musa. When Abu Musa heard of Abdullah's Fatwa, he acknowledged his learning and said:

"Do not ask me anything as long as this great scholar is present amongst you."

The fact that Abu Musa acknowledged the superior knowledge of Abdullah ibn Mas'ood and then actually instructed others to ask him all their questions concerning the Deen, is in fact a mandate for following an individual.

Certain quarters contend that although Abu Musa instructed people not to follow him as long as Abdullah was present, this does not necessitate that he prevented them from asking other Companions who were still present. Abu Musa was merely emphasizing that since Abdullah is more knowledgeable than myself; people should refer to him in all matters. The answer to this contention is that this incident occurred in Kufa during the time of Uthman where Abdullah ibn Mas'ood was the established scholar. As of yet Ali had not arrived in Kufa. So of the understanding of Abu Musa's statement is merely that "when a superior scholar is present, why go to a lesser scholar?" then it still refers to the fact that Abdullah should be followed in Kufa since there was no one who could match his knowledge. A narration in the *Mu'ajjam* of Tabarani tells us that Abu Musa was asked a question about suckling and he made a similar statement: "*Do not ask me while this (scholar) from the companions of the Prophet is present amongst us*." So it is clear that the circumstances and environment under which Abu Musa made this statement supports the idea of following a specific individual. Taqleed of a specific individual was not unfamiliar to the Companions.

Imam Tirmidhi and Imam Abu Dawood have both narrated that *when the Prophet sallalahu alaihi wa sallam sent Mu'adh ibn Jabal to Yemen (as a governor), he asked him:*

"How will you judge if you are asked to do so?"

Mu'adh said: "I will judge according to the Book of Allah."

The Prophet: "And if you do not find it in the Book of Allah?"

Muadh: "Then I will judge according to the Sunnah of His messenger."

The Prophet : "And if you do not find it in the Sunnah of the Messenger, or in the Book of Allah?"

Muadh: "Then I will exercise my opinion and I will not be negligent with it."

The Prophet then patted the chest of Mu'adh with his hands and said: "All praise is due to Allah Who has guided the emissary of His Messenger towards that which He guided His Messenger." [46]

The Prophet *sallalahu alaihi wa sallam* sent one of the best scholars from amongst the Companions. He appointed Mu'adh RA as a governor, judge, mentor and Mujtahid for the people of Yemen and ordered, him to be followed. He allowed him, not only to give Fatwas based on the Qur'an and Sunnah, but also to use and exercise his own judgment. It is clear that the Prophet *sallalahu alaihi wa sallam* decreed the people of Yemen to practice Taqleed of an individual. [47] To argue that this Hadith deals with judicial practices and not with Ijtihad and Taqleed [48] is misguiding. Aswas ibn Zaid said that Mu'adh ibn Jabal came to us in Yemen as a teacher and as a governor. We asked him regarding how the inheritance should be distributed of a man who had died leaving behind a daughter and a sister. He ruled that both the daughter and the sister should receive half each. [49] Here Mu'adh RA ruled as a Mufti and did not offer any proof for his ruling. His view was implemented by merely accepting and following it as in Taqleed. However, even though Mu'adh RA did not offer any explanation for his ruling, his opinion was based on the Qur'an and Sunnah. There is another Fatwa of Mu'adh RA in which he used his discretion and exercised his Ijtihad. Abu Aswad Al-Dailami said that when Mu'adh RA was in Yemen, people came up to him with a case of a Jew who had died and left a Muslim brother him. Mu'adh said:

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46 Abu Dawood in the chapter of judgements by opinion

47 A certain critic - who has labelled myself and others who practice Taqleed as infidels - has written the following comments: "before offering the hadith as a proof, perhaps he should have examined whether the hadith was sound or not" (At-Tahqeeq fi Jabawab Taqleed: Page 47), Then, the above mentioned critic has quoted the famous objection stated by Shaykh Zurqaani from the footnotes of Abu Dawood. Perhaps the person in question himself would like to observe how - in the process of condemning Taqleed - he has used the principle of taqleed himself by quoting Shaykh Zurqaani's objection to the hadith as sufficient proof against my argument. Morever, he seems to have found it sufficient to quote the footnotes of Abu Dawood in arguing in the integrity of the Hadith. If anything, perhaps he could have read and summarised the comments Ibn Qayyim has made on this hadith refuting Zurqaani's objections. Ibn Qayyim has argued that none of the transmitters of this hadith have been classified as liars or as weak. Their memory and integrity have not been questioned at all. Besides, there is another chain from Khatib of Baghdad which links us directly to hadith of Mua'adh RA whose narrators are all known as authentic and reliable. Also, the Ummah's acceptance of this hadith is a very important factor in seeing the authenticity of the hadith. (Ilaamul Muq'ieen vol.1 page 172)

48 as mentioned in Tahreeke Azadi Fikr, by Muhammed Ismail

"I have heard the Prophet *sallalahu alaihi wa sallam* say that Islam increases (gives) and does not decrease (take away)."

So Mu'adh then ruled that the Muslim should inherit from the Jew.50 Here Mu'adh RA used a Hadith whose background had nothing to do with inheritance, but still used it to form an opinion which was accepted and followed by the people of Yemen.51

There is yet another incident which has been narrated in the Musnad of Ahmed and in the Mu'ajjam of Tabarani which says that when Mu'adh came to Yemen, a woman from Khaulan met him and offered salaams to him.

"O dear man! Who has sent you?" she asked him. "The Prophet sallalahu alaihi wa sallam has sent me" replied Mu'adh.

"The Prophet sallalahu alaihi wa sallam sent you so that makes you the messenger of the Messenger of Allah."

"So won't you inform me of Islam O' messenger of the Messenger?" she continued

"*Ask me what you wish," replied Mu'adh.*52

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49 Bukhari vol. 2, page 99

50 Musnad of Ahmed: vol. 5, page 230 and 236 Hakim has also narated this Hadith and classified as sound even though Bukhari and Muslim did not narrate it. Dhahabi said that it is a sound hadith (Mustadrak of Hakim vol. 4, page 345)

51 It should be noted that this ruling was Mua'dh's own conclusion. The opinion of the majority of other Companions is based on a hadith which says that a Muslim does not inherit from a non-Muslim.

52 Al-Haithami in Majma'us Zawaid vol.4 page 307/308. Also Ahmed and Tabarani from the narration of Abdul Hamid ibn Bahraam from Shahar who were known to weak, but they also have been authenticated

It is clear that Mu'adh RA was sent as a representative of the Prophet *sallalahu alaihi wa sallam*. People would ask of him questions about Islamic issues and he would answer. The above mentioned woman verified his status and then proceeded to ask him questions. Mu'adh RA obliged her and answered her questions. One of her question was "What are the duties of a wife towards her husband?" In reply to this question, Mu'adh RA did not quote the Quran nor Hadith, but merely explained the broad Islamic principles. He did not offer any proofs for his answer. After all, Mu'adh RA is the one about whom the Prophet *sallalahu alaihi wa sallam* said that he was the most informed of what is Halal and what is Haram.53 The Prophet *sallalahu alaihi wa sallam* also said:

"Mu'adh will be raised on the Day of Judgment far ahead of Scholars to a distance that one can shoot an arrow".54

Not only did the people of Yemen follow Mu'adh RA, but so to did other Companions. Abu Muslim Khaulani said that he went to the mosque in Damascus and saw a group of Companions gathered there (and in the narration of Kathir ibn Hisham,55 there were close to 30 Companions of the Prophet *sallalahu alaihi wa sallam*). Among them, there was a young man whose eyes had antimony in them and who had white teeth. Each time they differed in an issue, they would refer to the Young man. Abu Muslim asked who the young man was and he was informed that it was Mu'adh ibn Jabal. 56 In yet another narration of this incident, the words are: "And whenever they differed in an issue, they would refer it to Mu'adh and accept his decision as final."57

Mu'adh ibn Jabal RA was among those Companions RA who were scholars and about whom the Prophet *sallalahu alaihi wa sallam* said that: "*the most informed about what is Halal and what is Haram."*

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53 Nisaai; Tirmidhi and Ibn Majah - all with sound narrators (Tadeebul Asmaa wal Lughaat by Nawawi vol 1, page 99)

54 Musnad Ahmed from Omar RA (Fathur Rabbani: Vol 21, page 352)

55 Musnad of Ahmed vol. 5 page 236

56 Ibid

57 Ibid page 233

He was also followed by several other Companions. The Prophet *sallalahu alaihi wa sallam* sent him to Yemen as a governor, judge and as a scholar whose opinion should be listened to and followed. The people of Yemen obliged and this is the essence of Taqleed of an individual. There is a narration in the Sunnan of Abu Dawood in which Amr ibn Maimoon Al-Awdai said:

"Mu'adh ibn Jabal RA came to us in Yemen as the messenger of the Messenger of Allah. I heard his Takbeer in Fajr and found that he had a deep voice. I developed an affinity with him and I did not leave his company until I buried him in Syria. Then, I searched for the most learned scholar after him and found Abdullah ibn Mas'ood. I stayed with him until he died."58

In this narration, Amr ibn Maimoon searched for a scholar after Mu'adh RA passed away. He stayed with Mu'adh RA and Ibn Mas'ood RA merely to seek knowledge of Islamic Law. So as long as Mu'adh was alive, he consulted him and when he died, he consulted Ibn Mas'ood RA. Referring to only one scholar is known as following an individual.

Likewise, the Tabi'een followed individual Companions. The following are some examples:

Imam Sha'bi said:

"Whoever wishes to take an authority in rulings and judgments should apply the statements of Omar RA."59

Imam Mujahid said:

"When people disagree about an issue, they should see what Omar RA did and accept it."60

Imam Aa'mush said about Ibrahim al-Nakha'i:

"Ibrahim did not consider anybody's opinion to be better than Omar RA and Ibn Mas'ood RA when they both agreed upon an issue. When they disagreed, Ibrahim would prefer Ibn Mas'ood's opinion over Omar's" 61

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58 Abu Dawood: vol 1, page 62 and Ahmed: vol. 5, page 231

59 'Ilaamul Muqi'een vol.1, page 15

60 Ibid

61 Ibid Page 13 and 14

Abu Tamimah said:

"We came to Syria and found people were forming an entourage around one person. I asked someone who this person was and he told me that he was the most learned of the Companions of the Prophet *sallalahu alaihi wa sallam* and who was still alive.

He was Omar al-Bakkali RA". 62

Imam Ibn Jarir Tabari said:

"No scholar had students who wrote his Fatwas and arranged his views in Islamic except for Abdullah ibn Mas'ood. Even Abdullah used to forsake his view completely and give preference to Omar if he disagreed with him, but they disagreed very infrequently."

Sha'bi said, "Abdullah did not recite the Qunut in Fajr. Omar had recited the Qunut, then Abdullah would have most definitely recited it also." 63

The several examples provide ample evidence of following one particular individual during the illustrious era of the Companions RA. There are various degrees of Taqleed. These differ with the qualifications of a person. Following one particular Imam does not exclude the possibility of deferring to another in different issues. This would not impede the general permissibility of following or making Taqleed of an individual. For example, there are issues where Hanafi scholars have not applied the view of Imam Abu Hanifa and have in fact given Fatwas contrary to the Imam's. However, they are still considered as followers of the Hanafi School of jurisprudence. This issue will be elaborated upon under the discussion and its various degrees. Shaykh Ibn Qayyim Al Jawziyya has used these very examples to show the fallibility of Taqleed.64 The argument for Taqleed is correspondingly advanced by the very same Ahadith65 employed by Ibn Qayyim Al Jawziyya.

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62 Ibid page 14

63 Ibid page 16

64 Ibid vol. 2, page 170

65 Maulana Habib Ahmed Kiranwi has in his work "Inhaa us sukoon", the Introduction to 'Ilaanus sunan (vol. 2, page 4-69) giving satisfying answers to the arguments raised by Ibn Qayyim

The narrations above conclusively prove that both forms of Taqleed: absolute Taqleed (or Taqleed in general) and Taqleed of an individual both existed during the time of the Companions RA. The truth is that both forms of Taqleed are sanctioned and permissible for those who cannot extract rules directly from the Qur'an and Sunnah. Shah Waliyyullah of Delhi writes:

"The criticism against Taqleed does not apply to the person who acknowledges that he should follow only the Prophet's *sallalahu alaihi wa sallam* statements, that is to say what Prophet *sallalahu alaihi wa sallam* made halal and what he made haram. Since this person does not possess the knowledge enumerated by the Prophet *sallalahu alaihi wa sallam* and is not capable of reconciling apparent contradictions, nor does he have a structured method of extracting rules from those statements, he should follow a righteous scholar assuming that he is right in his opinion, provided that the scholar follows the Quran and Sunnah and give Fatwas based on them. However, if this assumption of the follower is found to be wrong, he must withdraw from following that scholar immediately without any questions of debates. How can anyone doubt this line of thinking since the practice of asking for Fatwas and giving Fatwas has been in vogue from the time of the Prophet *sallalahu alaihi wa sallam* . There is no difference if he asks the scholar whom he follows all the time or whether he asks him sometime [as in following a particular scholar] and others on other occasions [or practicing Taqleed in general] as long as the scholar meets the criteria which we have mentioned."66

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66 Hujatul al Baaligah - vol 1 page 156 published by Salfiyah, Lahore 1395 and 'Iqdul Jeed, page 39 - published by Maktaba Mujtaba, Delhi, 1344

THE NEED FOR FOLLOWING A PARTICULAR IMAM

The Taqleed of an Individual

The passage of Shah Waliyyullah, quoted above, apparently condones that Taqleed is permissible. However, certain historical changes occurred and there was a need for systemisation. May Allah have mercy on the scholars who saw that there was a need to demarcate the practice of Taqleed. For reasons of administration and to avoid the possibility of contradictions amongst the scholars of differing Ijtihad over a primary source, the laity were encouraged to follow only one Imam and Mujtahid instead of referring to several. This idea gained hegemony during the third and fourth century AH. Hence, this has been the dictum of the vast majority of the Ummah for subsequent centuries, and scholars themselves have conformed to Taqleed of a particular Imam. In order to understand the reasons and benefits of the systemization of fiqh, the following premise has to be comprehended: following one's desires and passions is a very grave form of misguidance. Following desires and passions in itself is a grave sin, however there still remains the prospect that such people may repent. Following desires and passions to the extent that they believe what is halal to be haram and what is haram to be halal is disastrous. Disobedience of this nature is fatal and makes religion and law a mere sham. These people are submerged in a sin, which is far more serious and fatal than that of the first group. The door to such evil obviously has to be avoided, as does the path, which facilitates it. This is an established principle in Usool ul Fiqh (principles of jurisprudence). The jurists were concerned at the decay of piety and devoutness amongst the Muslim populous, devoutness being the norm during the time of the Companions. They feared that subsequent generations scruples would not be as elevated as the generation of the first three generations (Salaf). If under these circumstances, the door of following an Imam in general were unconditional inadvertently desires would become the commanding principle. For example bleeding expatiates wudu according to Imam Abu Hanifa, but not according to Imam Shafi'ee. For the sake of convenience and ease a person, who usually follows Imam Abu Hanifa. may choose to follow Imam Shaf'iee's opinion and offer salaat in this condition, which according to the Hanafis is not valid because he is without wudu. However touching a woman would invalidate his wudu according to Shafi'ees and does not according to Imam Abu Hanifa. According to both schools of jurisprudence (Hanafi and Shai'fee) such a wudu is expatiated and no school would accept Salaat of such a person as valid.

A person left freely to adopt the view which suited him best and abandon the Fatwa which did not meet his "standards" of comfort begs the question upon what basis is the "non-scholar" to choose between two contrary Fatwas if not ones own nafs (desires). It is clear that this line of action would result in people using Islamic law as a triviality to entertain the lower self. No Muslims scholar of any repute has validated this kind of practice. Imam Ibn Taymiyah discussed the deception of this approach and wrote:

"Imam Ahmed - among others - have categorically stated that it is not befitting for anyone to deem something haram at one time and then deem the same thing halal at another - merely on whim and fancy. For example, it is not proper for someone to believe that the

neighbour has the right of preemption (when someone is buying his neighbour's house) and then, when he wishes to sell his house to a non-neighbour declines to give his neighbour the right of preemption. Likewise, it is not proper for one to believe that a brother should inherit when the grand-father of the deceased is alive and when he becomes a grand-father he denies the brother of the deceased his share of the inheritance....So this kind of person who deems that something is permissible or forbidden, necessary or unnecessary merely because of whims and fancies is condemned and outside the boundaries of a just [reliable] person. Imam Ahmed and others have categorically stated that this practice is not permissible." 67
Ibn Taymiyah continues:

"They follow - at one point in time - those scholars who see the marriage as void and at another point of time; they follow those scholars who say that the marriage is still intact merely because of vested interest and desires. This kind of practice is not allowed according to the unanimous opinion of the Imams. An example of this is that the man considers the right of preemption to be valid for a neighbour when he is buying and not valid when he is selling. This is not allowed by Ijmaa' (the consensus of the Ummah). Likewise, it is not allowed to believe that the patronage of a sinner is valid when he gets married and considers the same patronage to be invalid when he decides to divorce. And even if the one seeking the Fatwa claims that he did not know about the differences of opinion, he would not be given any discretion since that would open the doors of playing with religion and would open many avenues of permitting and forbidding based on fancies and desires." 68

Subservience to desires and assuming something to be permissible or forbidden based on personal fancy is such a colossal crime that no scholar has allowed it. The Quran and Sunnah are replete with proofs for this argument. However, we have sufficed with Ibn Taymiyah's quotes since he is highly regarded even by those who do not believe that following a particular Imam is valid. Ibn Taymiyah himself believed that following a particular Imam was not permissible, but despite that, he did not subscribe to the idea that a person can follow an Imam based on his fancies and desires. In fact, he said that it was not allowed by the consensus of the Ummah.

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67 The Major Fatwas of Ibn Taymiyah: vol.2, page 23 - published by Darul Kutub al-Haditha, Egypt

68 Ibid vol. 2, page 285/286

During the times of the Companions and their followers, the fear of Allah and the Hereafter was so prevalent that absolute Taqleed (Taqleed in general) did not pose a threat to the kind of behavior elucidated above. For this reason people followed different scholars at different times and this was deemed to be praise worthy and totally acceptable. However with each succeeding generation the level of piety dwindled and the likelihood of succumbing to ones desires greatly increased. Scholars and jurists concerned at the degenerating circumstances issued a general Fatwa based on public interest, asserting that Taqleed is restricted to a particular Mujtahid Imam only. Absolute or general Taqleed should be abandoned. This was by no means an irrevocable Islamic statute but rather it was a legal opinion dictated by the demands of the time and the needs of the Muslim community. Imam Nawwawi, the commentator of Muslim explains the necessity of following a particular scholar in the following words:

"The reasoning for this is that if following any school of thought was allowed, it would lead to people hand-picking the conveniences of the schools in order to follow their desires. They would choose between halal and haram and between necessary and permissible. This would lead to relinquishing the collar (burden) of responsibility, this was unlike in the early days of Islam where the schools of thought were not readily available, nor were they structured or known. So based on this reasoning, a person should strive to choose one school of thought which he follows precisely." 69

We can elaborate upon Imam Nawwawi's statement that opening the doors to this kind of practice would lead confusion regarding the distinction between halal and haram. Since the era of the Companions, until now there have been thousands of scholars and Mujtahids who have had very diverse and disparate opinions and concessions concerning different issues. There will always be concessions in one school of thought, which are not found in another, regardless of the fact that these were great jurists, they were not immune from errors. In fact, every Mujtahid has one or two opinions, which go against the whole Muslim Ummah's position (Jumhoor). Allowing Taqleed in general (following any and every Imam) will inevitably result in what Imam Nawwawi has termed "relinquishing the collar of responsibility".

For example, Imam Shaf'iee allows chess; Imam Abdullah ibn Ja'far (apparently) allowed singing with musical instruments70; Imam Qasim ibn Muhammed allowed pictures which did not have any shadows71 ; Imam 'A'amush held the opinion that fasting started with sunrise and not at dawn72; 'Imam Ataa ibn Abu Rabaah maintained that if Eid fell on a Friday, both the Friday prayer and the Afternoon (Zuhr) prayers would be dropped and there would be no salaat un til 'Asr73; Imam Dawood Tai and Imam

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69 Al-Majmu: the commentary on Muhaddhab, by Nawwawi, vol. 1, page 91 (Matba'atul 'Aasima Cairo)

70 Ithaful Sadaatul Muttaqeen, by Zubaidi: vol. 6, page 458/459

71 Nawwawi in his commentary on Muslim: vol 2, page 199

72 Ruhul Ma'ani, by Aaloosi in the commentary of Surah-al-Baqarah, verse 187 - Aloosi wrote that only a blind person would follow 'Amush (whose name means the one with the squinted eye) in this regard

73 Tahdhibul Asmaa wal Lughaat by Nawwawi: vol. 1, page 334

Ibn Hazm both believed that a person could see his potential fiancee in the nude74 and Imam Ibn Sahnoon has supposedly allowed anal intercourse.75 There are numerous instances in the books of Fiqh and Hadith which corroborate following every Imam would give rise to a new school of thought based on carnal desires and the devil's temptations, making a mockery out of religion in this manner is not permissible. Thus Ma'mar wrote:

"If a man took the opinion of the people of Madinah with regards to music and anal intercourse; the opinion of the people of Makkah regarding Mut'ah (temporary marriage) and barter and the opinion of the people of Kufa regarding intoxicating drinks, he would be the worst of Allah's servants." 76

Despite being the worst-case scenarios, the above instances demonstrate the possibility of the abuse of the concept of Taqleed in general (following all Imams indiscriminately). The jurists following the first three golden generations advised that Taqleed should be exclusive only to a particular Imam avoiding the ambush of following ones desires and passions. Shaykh Abdur Raouf Manawi has discussed this issue at length and has quoted Shaykh Ibn Hamam:

"It is most probable that these types of restrictions are to prevent people groping for conveniences." 77

Shaykh Abu Ishaaq Shatibi, the great Maliki jurist has outlined the reasons for not allowing people to search for conveniences by following different schools in his famous work *Al-Muwafiqaat*. He discusses the various inequities which would arise in such cases and in fact, he has cited several examples to show how those who followed other schools because of selfish desires merely did so to satiate their own selves. In this context, he quotes the famous Maliki scholar, Shaykh Mazari who refused to give a Fatwa against the accepted Fatwas of the Maliki School on one occasion. The scholar asserted:

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74 Tahfatul Ahwadhi by Mubarakpuri: vol. 2, page 170 and Fathul Mulhim, vol. 3, page 476

75 Talkheesul Jeer, by Ibn Hajar: vol. 3, page 186/187

76 Ibid abd Iqdul Jeed, page 62

77 Faidul Qadeer, the commentary on Jami' sagheer: vol. 1, page 211 while commenting on the Hadith: "Differences in my Ummah are a mercy."

"I am not amongst those who prompt others to act against what is known and popular from the school of Malik and his Companions. This is because piety along with God-consciousness are almost non-existent. Desires have multiplied as well as those who claim stake to knowledge and audaciously plunge into offering Fatwas. If the door to go against the prevailing school of thought is opened for them, there will be irreparable damage done. They will violate the cover of respect for following the school [meaning they will stop following]. This is amongst the inequities that are obvious." 78

Shaykh Shatibi comments on this reasoning:

"Note how this Imam - whose credentials were universally recognised - refrained from giving a Fatwa contrary to the prevailing opinion in the Maliki School. This was based on the necessary principle of public interest since many who claim to be knowledgeable and issued Fatwas fell short in piety and God-consciousness. The examples have been quoted earlier. If this door remained opened the whole of the Maliki school - in fact all the schools - would disintegrate." 79

Shaykh Ibn Khaldoun explained why Taqleed prevailed:

"The Taqleed of four Imams became popular throughout Muslim cities and the Taqleed of other scholars was forsaken. The doors of diverse opinions were closed because so many academic terms were being used to denote so many different concepts and because it had become so difficult to reach the stage of a Mujtahid. There was the apprehension that the title of Mujtahid be attributed to one who was not worthy, or someone who is inauthentic (and cannot be trusted) in his opinion and in his religious practice. Scholars declared that attaining the stage of a Mujtahid was not possible and restricted people to follow a particular Imam. They prevented people from following Imams alternately as this was tantamount to playing [with Islam]." 80

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78 Al-Muwafiqaat: vol. 4, page 146

79 Ibid Page 146/147

80 Muqaddamah of Ibn Khaldoun page 448 published by Makatab Tijariyah Kubrah, Egypt.

In brief, the level of piety and God-consciousness during the era of the Companions was intense. Pursuing desires and passions was the exception rather than the norm during that era, thus anxiety that desires would overcome the populous in matters of Islamic law was non-existent. Both types of Taqleed were practiced in that era - the Taqleed of an individual and Taqleed in general. The foreboding possibility that desires would become the leading principle governing the selection of Fatwas and not piety was a real one. To avoid this it was decided that Taqleed be necessarily restricted to following one particular Imam. If this was not implemented, imagination is the limit to the chaos and turmoil that would be inflicted upon Islamic law.

Shah Waliyyullah wrote:

"You should know that people - during the first two hundred years - were not restricted to follow one particular Imam. During the third century, the concept of following one particular Imam emerged. There were very few scholars who did not rely upon the opinion of a single Mujtahid and Imam. This was the necessary approach for them at that time." 81

A question might arise from this analysis: How can something that was not necessary during the times of the Companions and their followers become necessary for people who came after them? An eloquent reply has been offered by Shah Waliyullah himself:

"It is mandatory that there should be someone in the community (Ummah) who knows details of particulars rules and laws with their reasoning and proofs. The people of truth have unanimously agreed to this premise. A science or action which is necessary to fulfill a mandatory action also becomes mandatory in itself. For example, the predecessors did not write the sayings of the Prophet *sallalahu alaihi wa sallam*, Today writing and documenting Hadith has become necessary, because the only way we can know and learn Hadith is by knowing the books of Hadith. Likewise, the predecessors did not engage in studying syntax and etymology. Because their language was Arabic, advanced study of these ancillary sciences was not required. Today, learning these sciences has become mandatory since the language has drifted considerably from the original language of Arabic. Based on this account, one must draw an analogy for proving that following one particular Imam and Mujtahid is sometimes necessary and sometimes not necessary." 82

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81 Al-Insaaf fi bayan sabab Ikhtilaaf: 57/59. Published by Matba' Mujtabai, 1935

82 Ibid 69/71

Based on this account, he later explained:

"If there is an ignorant person in India or in Central Asia where there are no expert scholars on Shafi, Maliki or Hanbali law, and if there are neither any books of those schools readily available, then this person must follow the school of Imam Abu Hanifa. It would not be permissible for him to leave that school because he would be effectively exonerating himself from the duties of Islam. He would be an anarchist. This would not be the case for a person who lived in the Two Sanctified Mosques [Makkah and Madinah where scholars of the three other schools would be readily available]. 83

Shah Waliyyullah hinted toward the chaos and corruption which was prevented by restricting Taqleed to one Mujtahid:

"In short, following the Mujtahids was a subtle inspiration which Allah unveiled to the scholars. A consensus arose among the rightly guided scholars, to its indispensability. Knowingly or unknowingly, it was upon this inspiration which the vast majority of the ummah united." 84

He wrote in another place:

"The Ummah has unanimously agreed upon the validity of following one of the four schools of thought - which have been organised and documented. There are many obvious benefits in this, especially today where determination has dwindled; where desires have penetrated our consciousness and gloating with ones own opinion is seen as a virtue." 85

A very clear example of what Shah Waliyyullah has stated can be found during the caliphate of Uthman RA regarding the compilation of the Quran. All seven dialects of the Qur'an were being recited. Uthman RA requested that all copies of the Quran be standardized upon the dialect of the Quraish whose Arabic was uncontaminated over successive generations. Hafiz Ibn Jarir Tabari - the great historian and commentator of the Quran - adhered to the opinion that Uthman RA abrogated the remaining six dialects and retained the dialect of the Quraish. All other copies of the Quran were discarded. From the time of the Prophet *sallalahu alaihi wa sallam* Abu Bakr RA and Omar *RA,* people were accustomed to recite in any of the seven dialects. Uthman RA perceived, that failure to standardize the Qur'an would bring about a state of chaos and commotion in successive generations.

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83 Ibid

84 Ibid

85 Hujjatullah vol. 1, page 154

Uthman RA abrogated six and used the dialect of the Quraish for the official rendition of the Qur'an. Ibn Jarir wrote: "That was the community which was instructed to memorise the Qur'an and recite it. They were given the choice to recite it in any of the seven dialects they chose to do so. For what ever reason, it [the community] was ordered to maintain one standard dialect and to discard the remaining six."86

There still remains the question that how can an action be allowed during the time of the Prophet *sallalahu alaihi wa sallam* (reciting the Qur'an in all seven dialects) and prohibited later. To paraphrase Ibn Jarir, the Muslim community was merely given the choice to recite in one of those seven renderings but no one rendering was made mandatory. The community later observed that there was benefit in restricting the dialects to only one. Ibn Jarir concludes:
"What they did was mandatory upon them. Whatever they did, they did so out of concern for Islam and its adherents. Thus, their mandatory action was what was preferred for them, than to continue [reciting with all seven] with the status quo which would have lead the community towards more harm than benefit." 87

The account given above was based on Ibn Jarir's view that Uthman RA had abrogated the remaining six renditions. There is another opinion about canceling the remaining six and that is the view held by Imam Malik. Ibn Qutaibah. Abu Fadl Razi and Shaykh Ibn Jazri. These scholars maintain that Uthman RA did not actually abrogate the remaining six renditions but rather standardized the script of the Qur'an to conform to one dialect which is the dialect of the Quraish. The other six renditions and dialects are still very much accepted as the Qur'an today.88 If we take this opinion, which is the opinion of the majority of researchers - then it still supports the case for following a particular individual. This is because before Uthman RA standardized the script of the Qur'an, people were writing the Qur'an with several different scripts and even the order of the Surahs varied.

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86 Taseer Ibn Jarir: vol. 1, page 19

87 Ibid: vol. 1 page 22

88 For a full detailed account of this view, read the commentary of the rare words of the Qura'n, by Nishapuri on the sides of Ibn Jarir (vol. 1, page 21) and Fathul Bari: vol. 9, page 25/26

Uthman RA annulled writing the Qur'an in different scripts, perceiving greater benefit to the Muslim community. The order of the Surahs was also standardized. He issued this decree throughout the Muslim world and had all other copies of the Qur'an discarded.[89] Uthman RA united the community on a standard script. This incident is an example of following one particular scholar and Imam. The action of Uthman RA proves that if the Muslim community decides to adapt a way - out of several - to achieve an ideal (like reciting or writing the Qur'an in a standard script), it may eliminate the other practice if there is greater benefit for the community and the avoidance of a harm. The same principle applies in the case of restricting Taqleed to the following of one scholar rather than following many.

Why The Four Schools of Thought?

This begs the question: *if following one particular Mujtahid is indispensable, why the need to restrict Taqleed to only the four schools of thought?* Several great Imams and Mujtahids have occupied the pages of Islamic scholastic history such personages as Sufyaan Thauri, Imam Awzaa'i, Abdullah ibn Mubarak, Ishaq ibn Rahwaih, Imam Bukhari, Ibn Abi Layla, Ibn Sibrimah, Hasan ibn Saleh and many others. Are all Mujtahids not equally qualified to be followed? Such a contention is valid in principle, but rather, it is not effectively possible. The schools of thought of the Mujtahids mentioned above are not systematically documented. Had their schools been formally codified and structured similar to the major four schools, then there would be no hindrance to following them. Unfortunately, their schools do not exist formally, nor have the original sources of the schools survived. To follow such schools would therefore prove difficult. Shaykh Abdur Raouf Manawi, the famous scholar of Hadith, has quoted Hafiz Dhahabi:

"We should believe that the four Imams, the two Sufyaans [Thauri and Ibn 'Uyainah], Awzaa'i, Dawood Zahiri, Ishaq ibn Rahwaih and all other Imams were correct. The non-Mujtahid should follow one specific school. It is not permissible to follow the Companions, nor their followers - as stated by the Imam of the Two Holy Mosques - since their schools are not documented or organised. In court rulings and in giving Fatwas, it is not permissible to follow a non-documented or a non-organised school. Also, the following of the four schools has flourished and has been refined to the extent that absolute terms have become specific and their general words have become defined. This is unlike the other schools where their followers have disappeared. Imam Razi has quoted that it is the consensus of the scholars that a lay person cannot follow the Companions and their Companions."[90]

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89 For further elaboration on this issue, read the author's book "The sciences of the Qur'an"

90 Faidul Qadeer, the commentary of Jami Sagheer by Manawi: vol 1, page 210

This point has been discussed by Imam Nawawi in the following words: "Although the knowledge and status of the Companions and their Companions is far superior than that of scholars who came after them, it is not permissible for any to follow their schools of thought. This is because they were not able to document their Fatwas nor arrange principles and details of their schools of thought. None of the Companions (or their followers) formed a structured school of law. This structuring was done by scholars who came after them who, being themselves ardent students of their predecessors, took on the task of formulating premises and rules of extrapolating and extracting laws before the incident occurred."

Taqleed being restricted to these four schools of thought has been explained by several great scholars. At this point, however, I would like to draw attention to two scholars in particular. The first is Imam Ibn Taymiyah and the second is Shah Waliyyullah. Their opinions will be quoted since even those who do not agree with the concept of Taqleed hold them in great academic standing.

Ibn Taymiyah has written in his book of major Fatwas: "There is no difference, as far as the Qur'an and Sunnah is concerned, in following one Mujtahid and not others. So Malik, Laith ibn Sa'd, Awzaa'i, Thauri were Imams of their times. Following any of them is permissible. No Muslim can say that it is permissible to follow one but not the other. However, if anyone has not allowed following any of these scholars in our times it is for one of the following two reasons. There remains no one who knows that particular Imam's school of thought. This would render that particular scholar [or his school of thought] dead. There is the famous difference of opinion regarding following a dead school [meaning a school of thought erased by time]. Following these Imams today is like following a dead person, which is not allowed. It would only be valid if knowledge of his school existed. The second reason would be to say that the consensus of scholars has determined that the opinions, which oppose those of these scholars, prevail today. If some scholar whose school is still alive today conforms with the opinion of those Imams whose schools do not exist today, then definitely, their opinions will be used as collaborating and secondary evidence." 91

Shah Waliyyullah, has allocated a whole chapter to this discussion in his book: "Iqdul Jeed" and called it:
"The Chapter of Emphasising following one of these four schools of thought and denouncing the idea of forsaking them."
He started the chapter by saying:
"You should know that following these four schools has tremendous public advantages and benefits. Forsaking them is wrought with mischief and harms. We will explain this with many inferences...." 92

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91 The Major Fatwas of Ibn Taymiyyah: vol.2, page 446

92 Iqdul Jeed: page 31

93 Ibid

He then goes on to explain the many reasons which I will paraphrase in points instead of translating a very lengthy passage. It is incumbent to rely upon the early predecessors if one is to understand Islamic law. The only way for us to do this is either to determine that the statements of the predecessors have been transmitted to us via sound chain of narrators or to read their statements, which are documented in reliable books. It is necessary to establish that these statements have actually been trusted and used by other scholars. Finally, if their statements are open to several meanings, then the most preferred meaning be adopted. Occasionally the statement of a certain Mujtahid may appear to be general but in fact it may be quite specific, which would be recognised by the scholars who have studied his school of thought. Thus, it is necessary that the statements of this certain Mujtahid be documented, understood and explained such that the rationale is emphasised. If a certain Mujtahid has not had his statements codified then such a Madhab should not be relied upon. In our age, the four prominent schools of thought share this advantage whereas other schools do not. The Imamiyah and the Zaidiyah schools of thought also have this privilege. However, since their opinions are non-Sunni, it would not be permissible to utilize their statements. The Prophet *sallalahu alaihi wa sallam* said: *'Follow the vast majority of the community.'* Since it is common knowledge that schools of thought besides these four have vanished, it would be going against the principle mentioned in the Hadith.

Finally, if giving a Fatwa based on any of the earlier scholars and their schools of thought were to be made permissible, then those corrupt scholars would take advantage of the Shari'ah and base their Fatwas on the statements of any of the predecessors. This would inevitably open the door to the abuse of their statements. Corrupt scholars would be asked to justify selfish desires by quoting pious predecessors. Relying upon following the vast majority of the community 93 would arrest the drift to chaos within the Shari'ah.

The Different Levels of Taqleed

Taqleed at each level has different rules. Not differentiating between the various levels can lead to misconceptions. False ideas regarding Taqleed develop due to not differentiating between these levels or totally ignoring them. This issue will be discussed at length because there remains some misinformation regarding the different levels of Taqleed.

The Taqleed of the lay person

In the context of Taqleed a "lay person" is defined as one who knows little regarding the Arabic language, and about Islam in general - even though they may be intelligent in other fields of knowledge. Proficiency to read Arabic titles concerning the Qur'an and Sunnah but devoid of any formal Islamic studies with a qualified instructor would also place a person within the ambit of laity. In addition, students who have taken formal courses in Islamic sciences but have failed to develop acumen would also fall within this classification. The above mentioned are under an obligation to practice Taqleed. They must follow a specific Imam and Mujtahid because they simply do not have the ability to refer to the Qur'an and Sunnah directly nor can they differentiate between what is apparently contradictory and give scholarly preference to one opinion over the other. Shaykh Khatib of Baghdad wrote:

"As for those who should apply Taqleed it is the lay person who does not know the methods of extracting Islamic rules. It is permissible for such a person to follow one specific Imam and act upon his Fatwas. This is so because he does not possess the tools for Ijtihad so his duty is to follow, just as a blind person must follow someone who is able to see for determining the direction of the Qiblah." 94

The Muqallid (follower) on this level cannot get caught up in discussions of proofs to see which Imam's view is stronger. His duty is merely to appoint one Mujtahid and follow his opinions in all matters. This is because he is not academically capable of making judgments of that kind. So much so that even if this person finds a Hadith which apparently contradicts the opinion of his appointed Imam, he should not resort to following the Hadith, but rather adhere to his Imam's opinion. He should assume that he has not understood the meaning or context of the Hadith appropriately or he should have no doubt that his Imam has a stronger proof than the Hadith in question, which he may not be aware of.

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94 Al-Faqih wal Mutaffaqih, by Khatib of Baghdad, page 68 - printed by darul Iftaa, Riyadh, 1389.

This might seem to be a ludicrous proposition, explaining away the Hadith and act upon the opinion of his Imam. The truth is that at this level of Taqleed no other alternative exists. Freedom to practice upon any Hadith one sees, completely regardless of the fact that Ahadith literature is spread over several hundred thousand Ahadith contained in over more than three hundred compilations, would lead to a distortion of the Shari'ah and result in chaos and confusion, because understanding how to extract rules from the Qur'an and Sunnah is so vast an enterprise that even if one spent a lifetime endeavoring to achieve this, it would not be possible to claim expertise. Many times, an apparent meaning is understood from a certain Hadith but after careful examination of the principles of the Qur'an and Sunnah, and other equally authentic Ahadith a totally different meaning emerges. Acting upon the apparent meaning of a Hadith will give rise to as many differing interpretations of a Hadith as there are intellects. I myself have witnessed many people who have studied the Qur'an and Sunnah and (without the aid of a scholar or a school) have made outrageous conclusions which are far removed from the truth. A friend very keen to study books on Hadith believed adamantly that although he was a follower of Imam Abu Hanifa, he would not hesitate to leave his school of thought if he found any Hadith, which contradicted it. Based on this belief, he informed someone, in my presence, that a person's wudu or ablution is not broken unless one actually hears wind passing or smells it. I understood immediately from where this misconception arose. It is true that such a Hadith exists in Tirmidhi. The full Hadith narrated by Imam Tirmidhi reads:
"*Abu Hurairah RA narrated that the Prophet sallalahu alaihi wa sallam said: "Wudu does not break unless there is a sound or smell*."

Imam Tirmidhi then narrated another Hadith, which is very similar to the one above: "*If anyone of you is sitting in the mosque and feels air between his buttocks, he should not leave unless he hears a sound or smells something*."95

My friend assumed that wudu did not break, according to this narration, unless there was evidence of a sound or a smell. The truth is quite far from it. All the scholars unanimously agree that this Hadith concerns only those people who are habitually suspicious of their wudu breaking 'without a valid reason. The Prophet *sallalahu alaihi wa sallam* informed that they would need more than their suspicions to confirm the invalidity of their wudu. This is elucidated in other narrations such as the one in Abu Dawood: "If anyone of you are in the mosque and feels some movement in his buttocks and then starts to doubt whether he has broken his wudu or not, should not leave unless he smells an odour or hears a sound." 96

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95 Jami' Tirmidhi: vol. 3, page 31

96 Sunan Abu Dawood : vol. 1, page 24

Abu Dawood himself has further narrated from Abdullah ibn Zubair RA that the Prophet *sallalahu alaihi wa sallam* explained this to person who was continuously suspicious of his wudu. Only a person who is qualified and an expert in Hadith can reach this conclusion. Acting upon reading one Hadith from one book would only lead to misconceptions and errors such as the one committed by the person in question. What is alarming is that he had been acting upon the apparent meaning of the Hadith for a long time. He did not know how many prayers he had offered without wudu.

Likewise, if the concession to leave an Imam's opinion for the sake of a Hadith is granted, the following Hadith narrated in *Tirmidhi* would appear to go against the collective *(Jumhoor)* Fatawa of the Imams.

"Ibn Abbas RA narrated that the Prophet *sallalahu alaihi wa sallam* combined the afternoon prayer (Zuhr) with the late afternoon prayer (Asr) and the evening prayer (Maghrib) with the night prayer ('lsha) in Madinah even though there was no rain or fear present. Ibn Abbas RA was asked to explain this action and said that the Prophet *sallalahu alaihi wa sallam* did not wish any burden to fall on his community." 97

The initial impressions one gains from this Hadith is the permissibility to combine Zuhr with Asr and Maghrib with Isha even without being a traveler, in fear or excessive rain. All the scholars, including the people who claim to follow Hadith literally, see the Hadith as meaning an apparent combining of the prayers in question. The Prophet *sallalahu alaihi wa sallam* offered Zuhr when it was almost time for Asr and then Maghrib when it was almost time for 'Isha. This interpretation would be in line with all other principles and proofs from the Qur'an and Sunnah, whereas the first and apparent meaning would not. These are two examples from many, where a person who is not qualified can very easily mislead himself and others into interpreting texts incorrectly. For this reason Scholars have declared that a non-scholar who is not capable of understanding Hadith should learn from a person who has expertise in the field. The Taqleed of an Imam or Mujtahid is made when there is an apparent contradiction in the Qur'an and Sunnah. If there is a difference of opinion between Imam Abu Hanifa and Imam Shaf'iee, proofs exist for both sides. In instances where there exist discordant proofs for two sides, the person who cannot judge which one of the two scholars, argument is stronger should follow a specific Imam and Mujtahid.

If one adopts Imam Abu Hanifa to be as one's Imam and finds a Hadith which apparently supports Imam Shaf'iee opinion, he should not leave Imam Abu Hanifa's opinion because there must be a stronger reason (according to the Hanafi view) for Imam Abu Hanifa (or Mujtahids within the Hanafi school) to leave the Hadith. None can conclude that the Hanafi view is against the Hadith. This is all the more apparent in a scenario where the follower does not have the academic qualifications to judge which proof is stronger, even if this follower finds a Hadith which contradicts his Imam, he should not forsake his Imam's opinion but rather assume that he has not understood the meaning of the Hadith in its appropriate context. The principle of this approach is very simple. A person who is in need of legal advice goes to a reputable lawyer and attorney.

He does not resort to researching the books of law independently. If he approaches a legal expert whose reputation is flawless and about whom he knows that he would not mislead him - and finds that there is an apparent contradiction in the law and what he is advising, he should still listen to the attorney and act upon his advice. He should still give his attorney the benefit of the doubt and assume that the law may be interpreted in a way, which is different to his own understanding. This approach is necessary (and accepted) because everyone knows that understanding the law requires tremendous expertise and acumen. This expertise is all the more necessary where the law is deduced from the Qur'an and the Sunnah and extrapolated to the full corpus of the Shari'ah, which covers the whole ambit of human existence. Scholars have indicated that the lay person should not resort to understanding the Quran and Sunnah directly, but rather consult scholars and jurists. This has been promoted to the extent that if a lay person is given a Fatwa which turns out to be wrong, the liability will be with the one who gave the Fatwa and not on the one who sought and applied it, but if a lay person decides to consult the texts himself and assumes an incorrect interpretation and acts upon it, he will not be freed from blame for his mistake since it was not his responsibility to search for an answer independently.

For example, cupping while fasting does not invalidate a person's fast. If a lay person asks a Mufti if cupping breaks his fast and the Mufti, for whatever reason, replies in the affirmative, then the burden of the lay person eating and drinking for the remainder of the day will fall on the Mufti and not on the lay person. The author of *Al-Hidayah,* a renowned book on Hanafi law, said that the lay person would have to make up the fast but there will be no additional penalty on him. The author of *Hidayah* explained this by saying that the Fatwa is a legal proof for the lay person, but if this same lay person read in *Abu Dawood* and *Tirmidhi* that the Prophet *sallalahu alaihi wa sallam* passed by a person who was cupping his blood while fasting and said:

"Both the one cupping the one cupped have invalidated their fast." [98]

He decided that his fast had broken and started to eat and drink, then according to Imam Abu Yusuf, he would have to make up the fast and be responsible for the penalty of fasting sixty days consecutively. Abu Yusuf explained: "The lay person must follow the scholar and the jurist since he is not able to reach a correct conclusion by reading the Hadith." [99]

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97 Tirmidhi: vol. 1 page 46

To summarise, the first level of Taqleed is for the lay person who should follow the opinion of his Imam.

The Taqleed of an expert scholar

An expert scholar although not a Mujtahid, has nonetheless developed mastery and command over Islamic sciences such as Tafseer, Hadith and Fiqh. Scholarship of this level demands the development of the capability to extract rules from the Quran and Sunnah. Shah Waliyyullah explained the term "Expert Scholar" in the following words from his "Chapter on the Expert Scholar on a school of Thought":

This scholar memorizes the works of his particular school. Prerequisites are that he should be of sound judgment and understanding; well-versed in Arabic and rhetoric; he should be aware of the different levels of preferences (in arguments) and he should understand the context of the scholars of his school of thought; he should be aware of the statements limited and restricted even though they may appear to be absolute". 100

This person is capable of being a Mufti within a school of thought. This classification of Taqleed differs from the Taqleed of a lay person in the following:

"This person is not only aware of the school of thought, but also of the reasoning behind the Fatwas of that school. As a Mufti, he is able to sift through the different opinions within his school and is qualified to issue Fatwas based on the needs of his age or to elucidate them accordingly. Hence, those issues, which are discussed in the books of the school of thought, which he adheres to, may be evaluated according lo the premises of the school. In exceptional circumstances, he may leave his Imam and follow the opinion of another Imam. The rules and conditions for this practice are explained in the principles of jurisprudence and in the books of giving Fatwas." 101

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98 This Hadith is sound as far as its chain of narrators go. Imam Bukhari has narrated that the Prophet sallahu alaihi wasallam himself cupped blood while fasting and Nisaai has narrated from Abu Sa'eed Khudri RA that the Prophet sallahu alaihi wasallam gave him permission to have his blood cupped while fasting. Based on these two narrations, all four schools of thought and all other scholars unanimously agree that the Hadith mentioned in the text (from Abu Dawood and Tirmidhi) is either abrogated or has another context. There are various other interpretations of this Hadith. Refer to Tahfaul Ahwadhi: vol. 2, page 64 and 65

99 Hidayah: vol. 1, page 226

100 'Iqdul Jeed: page 51

101 There are detailed accounts of these conditions in the book of Ibn Abi Deen like 'Uqood rasmul Mufti

A situation may arise where the Expert Scholar discovers a Hadith which totally contradicts the opinion of his Imam or an argument which is stronger than that of his Imam. In such a scenario, wrote Shah Waliyyullah: "Should this scholar practice the Hadith and forsake his school? There is a difference of opinion in this issue. The author of *Khazanatur Riwayaat* has discussed this at length and quoted from the book entitled: *"Dastoor ul Salikeen"*. We shall narrate his words verbatim...".102 Shah Waliyyullah continues to quote the text. The summary is that some scholars believe that this scholar does not have the prerogative to leave the opinion of his Imam and act on the Hadith because it might be that his Imam had a perspective, which he does not. However, the majority of scholars believe that if this expert scholar has evaluated all arguments from all angles, then he does have the prerogative to act upon the Hadith if he meets the following requirements:

1. He is actually an expert scholar of the caliber mentioned above.
2. He has adequately established that the Hadith in question is indeed a sound Hadith. Occasionally, the Mujtahid will relinquish acting upon a certain Hadith because it was not deemed sound, if that is the case, then the non-Mujtahid does not have the prerogative to leave his school.
3. No verse of the Quran or Hadith apparently contradicts the Hadith in question.
4. The meaning of the Hadith is clear and does not carry the possibility of another interpretation. A certain Mujtahid may assume a meaning of a text, which is against its apparent meaning. If that is the case, then the non-Mujtahid may not assume otherwise, since his Imam has fixed its meaning according to his intellectual prowess which the follower does not have. Taqleed requires that a non-Mujtahid follow a Mujtahid in areas where there is several possible interpretation of a text. 103
5. It is also necessary that the opinion of the expert scholar does not go against the consensus of the four Imams, the dangers and harms of going against the consensus of the four Imams have been outlined earlier. 104

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102 'Iqdul Jeed.....

103 These four conditions were stipulated in Maulana Ashraf Thanfi's book: al-Iqtisad fil wal Taqleed Ijtihaad: page 34 - 36

104 This condition is found in 'Iqdul Jeed: 58

With these conditions fulfilled, an expert scholar may leave his Imam's opinion. The following excerpts from prominent scholars verify this.

Imam Nawawi writes:

"Sheikh Abu Amr (Ibn Salaah) said that any scholar of the Shaf'iee school of thought who finds a Hadith which contradicts his school, then if he has perfected the tools of Ijtihad within himself, or if he has acquired command over the chapter of jurisprudence under discussion, or if he has acquired command over the issue under discussion he may follow that particular Hadith independently. If he has not reached perfection, or if he has not acquired command but still feels very uncomfortable in opposing the Hadith and does not find a reasonable explanation for his Imam's opinion, then again he may follow the Hadith if a Mujtahid other than Imam Shaf'iee has practiced the Hadith in question [Imam Nawawi was a Shaf'iee in Fiqh]. This [that another Mujtahid has applied the Hadith] is reason enough for him to go against his Imam. This is what Sheikh Abu Amr has said and is good and a standard." 105

Shah Waliyyullah concurs with Nawawi:

"The preferred opinion is the third which is what Ibn Salaah has said and with which Nawawi agreed and deemed correct..."106

There has always been a debate in the principles of jurisprudence whether Ijtihad can be partialized or not. Can a scholar who is not an absolute Mujtahid in the whole legal corpus of Islam be a Mujtahid in a particular field of Islam or in a particular issue in Islam? Some scholars reject the possibility because Ijtihad and its acumen is only developed when a scholar has reached a stage where he has prowess in the whole legal corpus of Islam and Islamic law. This is only a privilege of the absolute Mujtahid. However. a very large group of scholars maintain that a scholar may indeed be a Mujtahid in a certain chapter or issue of Islamic law even if he has not reached the level of an absolute Mujtahid. Shaykh Tajuddin Subki and Shaykh Mahalli both hold this view:

"The correct opinion is that Ijtihad can be partialized such that certain scholars develop acumen in certain chapters like inheritance for instance. This would be acquired by gathering all the proofs and arguments in that chapter themselves or by studying the school of a certain Mujtahid and then being able to analyse the positions with judicial expertise."

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105 Al-Majmoo' the commentary of Al-Muhaddhab: vol: 1, page 105

106 'Iqdul Jeed

Shaykh Banani wrote in his commentary on *Jam'ul Jawami':* "Ijtihad of a school of thought can be partial. This stage may be acquired by a person who is not an absolute Mujtahid." 107

Shaykh Abdul Aziz Bukhari wrote in the commentary of the Principles of Fakhrul Islam Bazdawi: 'In general, scholars hold that Ijtihad can be partial. It is quite possible for a scholar to become a Mujtahid in some rules and law instead of others." 108

Imam Ghazali wrote:

"I do not believe that Ijtihad cannot be partialized. It is possible for a scholar to be a Mujtahid in one area and not in others." 109

Shaykh Taftazani wrote:

"Also, you must remember that these conditions are for an absolute Mujtahid who gives Fatwas in all areas and issues, for a Mujtahid in one area and not in others, he must know everything related to his area and its rules." 110

Maulana Amir Ali wrote a footnote to what Shaykh Taftazani said: "The statement: *'As for the Mujtahid of a certain topic..'.* he should know the principles of his Imam since every extraction and extrapolation will be according to those principles. A new rule is known as Ijtihad in the rule; and a new proof for an existing narrated rule is known as extraction (Takhreej)." 111

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107 Both of the above quotation can be found in Shaykh Banani's commentary on Jam'ul Jawami' (in the footnotes): vol. 2, page 403-4, printed by Tijariyah al-Kubar of Egypt

108 Kashful Asraar by Abdul Aziz Bukhari: vol. 3 page 137

109 Al-Mustaf, by Ghazali: vol. 2, page 103

110 Al-Talweeh ma'a Al-Tawdeeh: vol. 2, page 118 (printed in Egypt)

111 Al-Tawshee ala al-Talweeh: page 604

Shaykh ibn Hamam has also agreed that Ijtihad may be partial. He has added further that a scholar who is not an absolute Mujtahid need only follow his Imam in issues where he has not reached the level of Ijtihad himself.112

Shaykh Zainuddin Ibn Nujaim has also quoted the exact text.113

However, Shaykh Ibn Amir al-Hajj has quoted Shaykh Zumulkani's decisive statement: "The Ijtihad acumen is of an indivisible nature in that a scholar must be able to extract and extrapolate rules; understand the context of text and proofs of premises and what contradicts them. His knowledge must be comprehensive in this sense and hence, this acumen is not divisible and is required even for partial Ijtihad. However, if a scholar possess comprehensive knowledge of a certain chapter or a certain issue, then he must use this acumen for that particular chapter or issue." 114

In summary, if an expert scholar finds that his Imam's opinion in a certain issue contradicts a Hadith which has proven to be sound and conclusive, then based on the above mentioned opinions of scholars, he may leave his Imam's opinion and practice the Hadith - even though the expert scholar may not have reached the level of absolute Ijtihad himself. Maulana Rasheed Ahmed Ghanghohi, the jurist of our times - wrote: 'After due diligence, if this opinion of his Imam is against the Qur'an and Sunnah, then every believer must leave the Imam's opinion. Nobody will deny this if the case is proven. The question is, how can a lay person determine this?" 115

The final word in this issue has been carved by Maulana Ashraf Ali Thanvi whose long quotation we will narrate here without any apprehension :

"If a well-versed, intelligent and unbiased scholar finds - through his investigation - or if a lay person sincerely discovers through a God-fearing scholar that the preference in a certain issue is for the opposing judgment, then it should be observed whether the less preferred opinion has any legal leeway or outlet for implementation, there are legal grounds [under Islamic law) for the implementation of the less preferred opinion and if forsaking that less preferred opinion would lead to commotion, disunity or turmoil within the Muslim community, then that less preferred (or weaker) opinion should still be followed. The following Hadith is adequate proof for this approach:

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112 Translator's note: I have left out the verbatim translation of the intricate Arabic text quoted by the author so as not to confuse the English render. The quote is from Amir Ali Shah Bukhari in his work "Tayseerul Tahreer": vol. 4. page 246 (Printed by Mustafa al-Babi)

113 Fathul Ghaffar. The commentary of Al-Manar by Ibn Nujaim: vol. 3, page 37 (Printed by Mustafa al-Babi. Egypt 1355)

114 Al-Taqreer wal Tajeer, by Ibn Amir al-Hajj; vol. 3, page 294

115 Sabeelur Rashad: by Maulana Gangohi: page 30-31 (printed by Matbou'a of Delhi 1352)

Ayesha RA said that the Prophet *sallalahu alaihi wa sallam* addressed her and said: "Did you know that your people - the Quraish - had reduced the foundations of the Ka'bah from the foundations laid by Ibrahim AS." Ayesha RA asked the Prophet *sallalahu alaihi wa sallam*: "If this is the case, then you should have the Ka'bah rebuilt according to the original foundations." The Prophet *sallalahu alaihi wa sallam* said: "If the Quraish had not been so new in Islam, [and so close to the days of Kufr] I would have done exactly that." There was a fear that people would disagree about the Ka'bah being uprooted which might have resulted in consternation. Though the preferred opinion was to rebuild the Ka'bah according to its original foundations, the Prophet *sallalahu alaihi wa sallam* did not sanction rebuilding the Ka'bah because the less preferred opinion of leaving the Ka'bah incomplete was also legally permissible, the less preferred opinion was given preference. If the less preferred opinion offers no legitimate leeway and instead actually leads to an illegal act or if it leads to forsaking a mandatory act - and does not have any evidence besides analogy and if the preferred opinion has a sound Hadith in its favour, then the Hadith must be practiced without any hesitation. No Taqleed would be permissible in this case. This is because the real issue is to follow the Qur'an and Hadith and that is what is intended by practicing Taqleed (that following the Quran and Hadith is facilitated). So when following the Qur'an and Hadith does not agree with Taqleed, the former must be adopted. Sticking to Taqleed under these circumstances is what has been condemned by the Qur'an, Sunnah and scholars.

If these circumstances do arise, condemning or keeping enmity against any of the scholars and Mujtahids is not permissible. This is because there is a possibility that the scholar in question did not know of this Hadith, or if he did, he found it to be weak or explained by another principal of Islamic law. The scholar and Mujtahid would be excused for this oversight. Similarly, the issue that the Hadith in question did not reach this particular scholar does not undermine his academic acumen. There are several instances where the great scholars from among the Companions did not hear of a certain Hadith until very late in their lives, but their academic acumen or expertise was never questioned or in doubt. Likewise, a person who practices Taqleed does not have the prerogative to denounce or criticize one who has not made Taqleed in an issue if the criterion of the mentioned above are fulfilled (where following the Hadith should be adopted). This kind of difference has been in vogue since the time of our predecessors. Scholars have generally acted upon the maxim (Qawa'id) *my school is assumed to be correct with the possibility of error and the other schools are assumed to be incorrect with the possibility of being correct.* This dictum enables following a particular school while also accepting other schools as equally valid. However, differing in the basic theological precepts and concepts of the predecessors, or condemning the predecessors, place the perpetrator outside the Ahle Sunnah wal Jama'ah. This is because the Ahle Sunnah wal Jama'ah is the main body of the Muslim community whose opinions were believed and followed by the Companions of the Prophet *sallalahu alaihi wa sallam*. This action of condemnation is totally against the actions of the Companions and therefore such a person would be outside the parameters of the Ahle Sunnah. Similarly, a person who adopts an extreme position with regards to Taqleed such that he rejects the Qur'an

and Sunnah should also be avoided, in fact, one should try and avoid arguing or exchanging views with such people." 116

The moderate prescription offered in this statement by Maulana Thanvi would save the Muslim community from many internal disputes. With the above conditions fulfilled, an expert scholar may leave the opinion of his Imam and follow a Hadith instead, but despite this very partial difference with his Imam, he would still be considered a follower (Muqallid) of his Imam. Hence, many Hanafi scholars have diverged from Imam Abu Hanifa's opinion on certain issues. For example, drinking a very small amount of intoxicating drink - from a non-wine substance - in order to gain some strength was allowed by Imam Abu Hanifa but not any other scholar. The Hanafi scholars left the opinion of their Imam and followed the opinion of the majority. Also, Imam Abu Hanifa did not allow the practice of temporary share cropping contract. Again, the Hanafi scholars did allow this practice under very strict conditions and with defined shares. These are two examples where the later scholars agreed to disagree with Imam Abu Hanifa. Otherwise, there are several examples where specific individual Hanafi scholars have diverged from the Imam's position on account of a Hadith. The issue is indeed very sensitive and to assume that the scholarly credentials which are indispensable for this kind of academic activity is achieved without great exertion, would be atrocious to say the least. Disregarding the layman, not even capable scholars have ventured out of the agreed position within the Madhab to which they adhere.

The Taqleed of a scholar who is a Mujtahid in his school

A scholar who is a Mujtahid in his school follows and adopts an absolute Mujtahid's principles of extracting and deriving rules [usool] but possesses the ability to extract laws directly from the Quran and Sunnah. Such a Mujtahid may differ with his Imam on certain details and rules but follows the majority of the rulings with in the school. Imam Abu Yusuf and Imam Muhammed from the Hanafi school; Imam Muzni and Imam Abu Thaur from the Shaf'iee school; Imam Sahnoon and Imam Ibn Qasim from the Maliki school and Imam Ibrahim al-Harbi and Imam Abu Bakr al-Athram from the Hanbali school are all examples of Mujtahids with in their respective schools who differed with the founders of their schools, Shaykh Ibn Abi Deen introducing these scholars writes:

"The second level [of Mujtahids] are those who are Mujtahids in their school of thought like Abu Yusuf and Muhammed and all other Hanafi scholars who are capable of deriving rules from the above mentioned proofs based on the principles of their teacher (Imam). These scholars, although differing with their teacher in certain details, follow him in the bases of his principles."117

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116 Al-Iqtisaad fil Taqleed wal Ijtihad, by Moulana Thanvi: page 42-45

117 Sharhu 'Uqood Rusmul Mufti, by Ibn Abi Deen: page 4, printed by Darul Isha'aat, Karachi 1378

This is the reason why Imam Abu Yusuf and Imam Muhammed are considered to be Hanafi scholars even though they differed with Imam Abu Hanifa in many details.

The Taqleed of an absolute Mujtahid

An absolute Mujtahid is a scholar who fulfills all the necessary requirements of Ijtihad. He is able lo formulate principles of derivation and extraction from the Quran and Sunnah, and deduce and formulate Islamic laws from the primary sources. Imam Abu Hanifa, Imam Malik, Imam Shaf'iee and Imam Ahmed ibn Hanbal are examples of such scholars. However, as much as these scholars are absolute in their Ijtihad, they too are not immune to following [making a degree of Taqleed). These scholars would resort to following a Companion or a follower of a Companion in issues where the Qur'an and Sunnah were silent.

They would give preference to their opinions over their own analogies and Ijtihad. The following are some examples from the first generation of Muslim scholars.

Omar RA sent a letter to Qadi (judge) Shuraih which formed the basis of this practice. Imam Sha'bi said:

"Shuraih reported that Omar wrote to him and said: "If you are in a dispute or in a case where a rule from the Quran is evident, then judge accordingly. If there is nothing in the Qur'an, then look into the Sunnah of the Messenger of Allah and judge accordingly. If there is nothing in the Sunnah, then see what people (scholars) have agreed upon and judge accordingly. And if there is nothing in the above-mentioned sources, then you have a choice. You may either exert or exercise your own opinion and enforce it, or you may reserve judgement. I believe that reserving your opinion can be nothing except good for you."118

We should observe that Shuraih was an absolute Mujtahid. Omar RA advised him to exercise Ijtihad only if he did not find another's opinion. Abdullah ibn Mas'ood *RA* also made a similar statement as mentioned earlier under the discussion concerning absolute Taqleed. Darami has narrated in his Sunnan that Ibn Abbas RA would answer from the Qur'an when he was asked about an issue. If he did not find it in the Qur'an, he would answer from the Prophet *sallalahu alaihi wa sallam* . If he did not find an answer there either, he would answer from Abu Bakr and Omar. If there were no answer there, he would then resort to his own opinion.119 Here again we see that Ibn Abbas RA who was a competent Mujtahid himself only resorted to his own opinion if he did not find a solution from Abu Bakr and Omar. Sha'bi said that a person came to him and asked him a question. He (Sha'bi) said that Ibn Mas'ood RA made the following comment on the same issue. The person insisted that Sha'bi gives him his opinion. Sha'bi exclaimed: "Look at this man! I informed him of what Ibn Mas'ood said and he is asking me for my own opinion. My faith is much dearer to me than that [I should honour his request]." 120

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118 Suanan of Darami: vol 1, page 55, printed by Madinah Matbu'ah, 1386

119 Ibid

120 Ibid vol. 1 page 45

Here, Imam Sha'bi (who was one of Imam Abu Hanifa's teachers) preferred to rely on the opinion of Ibn Mas'ood RA. Imam Bukhari has narrated (with a suspended chain) Mujahid's statement regarding the commentary of the verse:

"**And make us leaders for those who are God-conscious, make us Imams (leaders) who follow those who came before us and allow those who come after us to follow us**".

Hafiz Ibn Hajar said that Mujahid's statement has been narrated with a sound chain by Ibn Jarir and Faryabi. Ibn Hajar went on to collaborate this statement with similar quotations from several other commentaries. He concluded with Suddi's quote from Ibn Abu Hatim:

"The purpose is not to become Imam (in salaat). These scholars are supplicating: O Allah! Make us leaders in matters which are halal and haram so others can follow accordingly."121

Ibn Abu Hatim has also narrated from Ja'far ibn Muhammed:

"The meaning is: O Allah! Give me acceptance among people such that if I say something, they approve of it and accept it from me." 122

Mujahid, who was an absolute Mujtahid, realised the importance of following his predecessors, a principle, which unfortunately seems to be much maligned in the present era.

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121 Translator's note: In other words: O Allah! Make us so God-fearing: that we enjoy what is halal and abstain from what is haram and then allow others to follow us.

122 Fathul Bari: vol. 13 page 210

RESPONSES TO DOUBTS RAISED AGAINST TAQLEED.

The Following of Forefathers is Condemned in the Qur'an

The Qur'an has categorically condemned the following of ancestors and forefathers:

"And when it is said to them: "Follow that which Allah has revealed", they reply: "No, rather we will follow what we have found our fathers upon." (This they say) Even though their fathers do not understand, nor are they guided."

(Surah Al-Baqarah : 170)

This verse outlines of the basic understanding of the religion. The polytheists did not accept the principle values of Tauheed (the Oneness of Allah): Prophethood and the concept of the Hereafter, and used the argument that their forefathers did not believe in these values. The concept of Taqleed does not entail following Imams or Mujtahids in such fundamental issues and truths as beliefs because these are not subject to Ijtihad. That is why this is made categorically clear in all classical literature.

For example. Shaykh Amir Badshah Bukhari wrote in his commentary on *Tahreerul Usool:*

"The chapter on the areas where asking for a Fatwa is valid are issues and rules which are non-conclusive and which are not related to beliefs. This is because certitude is required for issues relating to aqeeda [beliefs] according to the sound opinion. Taqleed will be disallowed in such issues and it is necessary to acquire such truths through correct understanding."123

The Taqleed, which is condemned in the above-cited verse, has also been categorically denied by the Imams. Shaykh Khatib Al Baghdadi has used the very same to prove this point in his book *Usool Aqaid*124. Allah has given two reasons why the Taqleed of forefathers is condemned. Rejecting the revealed words and commandments of God and announcing to follow their fathers regardless of the truth of the message. The second is that their forefathers were bereft of understanding and guidance. The Taqleed under discussion does not fall into these two forms of misguidance. None who expounds the doctrine of Taqleed shuns Allah and His Messenger and then follows an Imam in their place. In fact, they deem their Imam to be an interpreter of the Quran and Sunnah. Likewise, none - not even those who denounce Taqleed - can claim or say that the Imams under question were devoid of basic understanding. All testify to the scholarship of these Imams. Thus, equating the Taqleed of these Imams with the Taqleed of non-believers is not only incorrect but also unjust.

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123 Taiseerul Tahreer, by Amir Badshah Al Hanafi : vol. 4, page 243

124 Al-Faqih wal Mutafaqqih by Khatib vol. 2, page 66

The Condemnation of Taqleed of Savants and Sages

"They (the People of the Book) adapted their savants (priests) and hermits (sages) as lords as equals besides Allah." (Surah Al-Taubah: 31)

Taqleed of a scholar or Mujtahid is not equated as accepting his opinion as law or legislation. No Imam is regarded as lawmaker. They are merely regarded as interpreters of the law. To confer the status of an independent lawmaker upon an Imam who has to be followed irrespective of his interpretation is of course tantamount to shirk. Opinions are followed upon the basis of being interpretations of the law.

Ibn Taymiyah writes:

"It is incumbent upon people to follow Allah and His Messenger. These "People of Authority" the following of whom has been decreed by Allah, are to be followed subject to their following Allah and His Messenger and not as independent sources of guidance"125

Shaykh Ibn Taymiyah has differentiated between following an independent source of guidance and following someone subject to and constrained upon divine guidance.

On another occasion. Ibn Taymiyah states:

"...So following Allah and His Messenger deeming Halal what Allah and His Messenger have made halal and deeming haram what Allah and His Messenger have made haram and enforcing whatever Allah and His Messenger have made mandatory is incumbent on both humans and jinns, in private and public. Certain rules and laws are not easily recognised or understood except by the scholar, for this reason recourse to the knowledgeable in rules and laws established by Allah and His Messenger is recommended. Imams of the Muslim nation are in fact means and avenues and proofs (serving as bridges) between the Muslim community and the Prophet *sallalahu alaihi wa sallam* . They convey his statements and they explain it's meaning - according to their Ijtihad and capabilities. It is possible that Allah has given a certain scholar superior knowledge and understanding than another."126

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125 Fatawa of Ibn Taymiyah: vol.2 page 461

126 Ibid : page 239

Advocates of Taqleed claim nothing more than this. In summary Taqleed advocates:

There is no Taqleed in the fundamental beliefs of Islam.

There is no Taqleed in issues, which are obvious, and which have been transmitted to the degree that that they have become almost undoubted.

There is no Taqleed in those issues of the Quran and Sunnah which are conclusive and are not contradictory.

Taqleed is made in those issues where there are different and perhaps contradictory statements on the same issue in the Qur'an and Sunnah and where instead of relying on one's own judgement, the opinion of an expert scholar is trusted and adhered to.

The Mujtahid is not infallible and therefore his opinions are subject to correction.

If an expert scholar finds a sound Hadith to which there are no contradictions, then he must forsake the opinion of his Imam and follow the Hadith.

So if this method is tantamount to Shirk, then what act on earth is protected from this sort of Shirk?

In reality, even opponents of Taqleed engage in a form of following, after all even they were not born Mujtahids. Many opponents are not scholars in any sense of the word and even those who are scholars do not have the academic command over every issue. Antagonists of Taqleed - who are non-scholars - will follow the answers offered by scholars. Hence, there are several compilations of Fatwas where no immediate commitment is made to present proofs, and even where there exists some dialogue on proofs, how can a lay person determine right from wrong? Thus even the opponents of Taqleed end up being Muqallids (followers). As for those who are scholars, they remain under the obligation to examine all the resources on the Qur'an and Sunnah before reaching a decision in an issue. In reality, however, not even scholars examine each issue a new rather they too are obliged to resort to the books of fiqh of the early scholars. The only difference is that instead of reading hooks from the Hanbali, Shaf'iee schools of thought they prefer to refer to Ibn Taymiyah, Ibn Qayyim, Ibn Hazm and Qadi Shaukani. Thus, they consider the opinions of these scholars as being sound and just, and consequently follow them. If antagonists of Taqleed do have the opportunity to research and comb through all of their resources on the Qur'an and Sunnah on an issue, they are left with no alternative except to follow. This is because as they try to establish the authenticity of a certain Hadith they have to rely upon the opinions of the scholars who screened the narrators of Hadith *(Jarh wa Ta'deel).* No alternative exists except to determine whether one narrator was weak as opposed to another except by what the Ulama declared earlier. In other words, deciding that a particular Hadith is weak one has to resort to Ulama of '*Jarh wa Ta'deel* ' who deemed the narrators of the Hadith weak. This is Taqleed with regards to the opinion of that particular scholar on Hadith. The books, which screen the narrators of Hadith, do not offer reasons for their judgments: they merely state individuals who had weak memories [or other flaws] and others who had

good memories. Furthermore, where there are two Hadith which are quite sound as far as the chain of narrators go, upon what basis is preference given to one over the other. The only basis, which usually governs the acceptance of one Hadith over another, is the opinion of a certain scholar, who has deemed the less preferred Hadith as suspect to another interpretation. Relying upon the expert opinion of a scholar to make their own judgments regarding Ahadith, ironically, is allowed in this circumstance. The truth is that following the opinion of experts is part and parcel of every day life. If we were to condemn this very normal and mundane activity, life would be become impossible.

The Hadith of 'Adi Ibn Hatim RA

The following Hadith reported from 'Adi Ibn Hatim is also used to refute the arguments for Taqleed. 'Adi Ibn Hatim RA said that he came to the Prophet *sallalahu alaihi wa sallam* wearing a gold cross around his neck. The Prophet *sallalahu alaihi wa sallam* said:

" O 'Adi ! Throw away this idol from yourself."
Then the Prophet sallalahu alaihi wa sallam recited the verse:
"They took their savants and sages as Lords besides Allah."

He said:

"It was not that they worshipped these people, but rather whatever they made permissible for them, they believed it to be permissible and whatever they forbade, they believed to be unlawful. " (Tirmidhi)

As emphasised previously, this Hadith has no relation to the issue of following an Imam. The differences are exactly as highlighted previously. The People of the Book regarded their priests and monks as lawmakers. They hold the pope as a legislator and claim him to be infallible. This is confirmed by the Encyclopedia Britannica:

"Thus, since the Pope holds the highest authority in beliefs and doctrines, his authority is supreme and he himself is infallible. This status [of infallibility] is held by the archdioceses collectively. The pope has the same power to legislate and to judge, as do the collective archdioceses. Thus, the pope reserves the right to legislate" 127

Those who follow the Imams and Mujtahids have never associated this kind of authority, legislative power and infallibility to their scholars. Thus, there is absolutely no comparison between the authority priests wielded over their parishioners and that which Muslim scholars wield in disputed issues of Islamic law.

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127 Encyclopedia Britannica: vol. 8, pages 222/3 (printed 1950)

The Statement of Abdullah ibn Mas'ood RA

The following statement of Abdullah ibn Mas'ood RA is utilised as an objection against Taqleed:

"No one should follow the religion of another such that if he believes, he believes and if he disbelieves, he disbelieves."

The question is who actually condones this sort of Taqleed? The text condemns Taqleed in beliefs and articles of faith. No scholar supports Taqleed in beliefs and articles of faith, as elucidated earlier. As far as following the predecessors in legal issues. Abdullah ibn Mas'ood RA has said:

"Whoever wishes to follow should follow the footsteps of those who have passed away. This is because living people are not immune from corruption [and change for the worse]. They [those who are worthy of following] are the Companions of the Prophet *sallalahu alaihi wa sallam* . They were the best of this community...So acknowledge their merit: follow their footsteps and hold fast - as much as possible - to their guidance and character for they were upon guidance." 128

The Statements of Mujtahid Imams themselves

Contentions that the Imams themselves have prohibited the following of their opinions until they have discovered the proofs and that if their opinions conflict with any Hadith, they should smite their opinions against the wall and practice the Hadith, are of course true. However to do justice to such statements, one would have to conclude that they are not addressed to people who do not possess the faculty of Ijtihad. Rather, they were appealing to those scholars who were capable of Ijtihad. Shah Waliyyullah of Delhi has summarised such statements thus:

"These statements can be assessed against those who have some ability to exercise Ijtihad - albeit in one single issue; or against those who have conclusively determined that the Prophet *sallalahu alaihi wa sallam* ordered this and prohibited that [and the issue is not abrogated]. This may be achieved by researching the corpus of the Hadith, the statements of those scholars who opposed and supported [the view in question] or this may be acquired by realising that many expert scholars have opposed the view in question which in itself can only be supported by analogy or deduction. If such is the case, then there is no reason to go against the Hadith of the Prophet *sallalahu alaihi wa sallam* ." 129

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128 Mishkatul Masabeeh: page 32

129 Hujjatul Baligah: vol. 1, page 155

This meaning is clear. The Mujtahid Imams did not claim that Taqleed was not valid. Their own lives were filled with incidents and occasions where lay people came to them with hundreds of questions to which they answered without volunteering any proofs. Taqleed's permissibility was never questioned during the era of the Mujtahids. If such a practice were held to be invalid the Imams would never have allowed themselves to become its tools. Several statements from the Imams categorically state Taqleed to be necessary for the non-Mujtahid. The following are a few examples:

"When the Mufti is such that he is a Mujtahid, then the lay person must follow him, even if the Mufti has erred in his judgement. This is how Hasan has narrated from Imam Abu Hanifa; Ibn Rustum from Muhammed and Bashir ibn Waleed from Abu Yusuf." 130

Imam Abu Yusuf continues:

"The lay person must follow the jurists since he is not capable of understanding the Hadith independently". 131

Ibn Taymiyah reported that Imam Ahmed Ibn Hanbal used to:

"Instruct the lay person to ask Ishaaq, Abu Obaid, Abu Thaur and Abu Mus'ab. However, he used to prohibit his own Companions like Abu Dawood. Uthman ibn Sa'eed, Ibrahim al-Harbi, Abu Bakr al-Athrum, Abu Zar'ah, Abu Hatim and Muslim (among others) to follow anyone. He would say to them:

"You must follow the sources of the Qur'an and Sunnah."132

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130 Kifayah: the commentary of Hidayah in the chapter fasting

131 Abu Yusuf cited previously from Hidayah: vol. 1, page 226

132 Fatawa ibn Taymiyah: vol. 2, page 240

This statement by Ibn Taymiyah makes it very clear that Taqleed was unsuitable only for those scholars/students who themselves were jurists and had the potential to become like their teachers in making decisions directly from the Qur'an and Sunnah. As for those who did not possess the requisite qualifications, they are strongly implored to follow a Mujtahid and practice Taqleed. In fact, Taqleed for the non-scholar was so overwhelmingly accepted amongst the scholars that only the Mu'tazilah disagreed with the idea. Shaykh Saifuddin Aamodi wrote:

"The lay person and the scholar who does not possess the ability to exercise Ijtihad - although they may possess some reliable skills in certain issues - must follow the opinion of a Mujtahid according to experts in principles and foundations (Usool). Some Mu'tazilah of Baghdad have differed on this issue and have prohibited Taqleed even for these people." 133

Shaykh Khatib of Baghdad wrote:

"It has been narrated from certain Mu'tazilah that it is not permissible for a lay person to follow the opinion of a scholar until he knows the reasoning behind his opinion. This is wrong because the lay person has no recourse to understanding the reasoning until he has studied for several years; has actually participated in the discussions with jurists and other scholars; has developed an understanding for analogy and realised what is correct and what is not. For a lay person to go through all this is subjecting him to carry a burden which is beyond his capabilities and that is not incumbent upon him."134 There has been a difference of opinion - among the Mujtahids - as to whether a person who is capable of Ijtihad can follow another's opinion. Khatib of Baghdad has narrated Abu Sufyan as saying that indeed he may do so and Imam Muhammed as saying that he may follow the opinion of someone who is more knowledgeable than he. 135 Shaykh Ibn Taymiyah has also narrated this opinion from Imam Muhammed. Imam Shaf'iee and Imam Ahmed both say that this not allowed at all. 136 Maulana Abdul Hai of Lucknow has recorded (while introducing Shamsul Aimah Halawani) Imam Imam Abu Hanifa's opinion:

"It has been narrated from Imam Abu Hanifa that it is permissible for a Mujtahid to follow someone who is more knowledgeable than himself." 137

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133 Ihkaamul Ahkaam, by Aamodi: vol. 4, page 197 also in Mustasfa of Al-Ghazali: vol. 2, page 124

134 Al-Faqith wal Mutafaqqih, by Khatib: vol 2, page 69

135 Ibid

136 Fatawa Ibn Taymiyah: vol. 2, page 24.

137 Al-Ta'leeqaat Siniyaah, page 96

The details of this debate can be found in the books of Islamic principles of jurisprudence such as al-Mustasfa of Al-Ghazali and Fawatihur Rahamut. In brief, other than a handful of Mu'tazilah scholars, no one has disagreed that a lay person should practice Taqleed.

How does a lay person recognise a Mujtahid

The essence of Taqleed is that a person who doesn't have the capability to reach a decision based on the Qur'an and Sunnah should adhere to an expert scholar and rely upon his judgement. A question may arise from this explanation. That is, if the person following has no academic merit, how is he to determine the expertise of the scholar whom he is asking and following?" 138 In response to this question, we will suffice with an excerpt from Imam Ghazali:

"If it is asked, a lay person may base his choice on assumptions and hence, he may be deceived by appearances. This may lead him to give preference to a lesser Imam over one who is more suited. So if he is allowed to exercise his judgement (in choosing an Imam) and acts upon his assumptions, why can't he then act upon his assumptions in the issue under discussion? Understanding the various degrees of scholarship is very intricate and a lay person cannot be the best judge for that. This question is valid. Our answer is that if a non-physician, whose child has become sick, decides to administer medicine as he sees fit will be held responsible and will be guilty of transgression. If he consults a physician, he will not be responsible and will not be transgressing. If there are two physicians in town and they differ over the prescription, then if the father of the son decides to take the prescription of the lesser over that of the better physician, he will be held accountable. He (the father) would know of the better physician by merely listening to the opinions formed by patients, by the lesser physician's referral to the better physician and by overwhelming signs which will convince him (the father) that this physician is better than the other. The same is the case for choosing the best scholar from several. There is no need to look into the issue itself (just as it is not necessary to look into the prescription or medicine). This much, the lay person is quite capable of doing and determining. It is not proper to go against the overwhelming assumption merely because of likes and dislikes. This is the most correct opinion - in our view - and the most suitable for regulating people in God-consciousness (Taqwa) and accountability." 139

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138 Tahreeke Azadi Fikr: page 130

139 Al-Mustasfa, by Al-Ghazali: vol. 2, page 126

Is Taqleed a defect?

Taqleed was prevalent during the time of the Companions of the Prophet *sallalahu alaihi wa sallam* Companions who were not able to practice Ijtihad themselves referred to those who were scholars. It has been argued by some quarters that Taqleed presumes a lack of knowledge (or ignorance) which is contrary to the belief of the Ahle Sunnah, that all Companions should be revered. Associating the Companions with Taqleed is tantamount to declaring them as defective and hence unworthy of following. All the Companions of the Prophet *sallalahu alaihi wa sallam* had knowledge and they were all jurists in their own right. 140 This criticism is merely emotional. Not being a jurist nor a Mujtahid is not a blemish on one's personality. Conversely, being a jurist and or a Mujtahid does not guarantee merit in the Eyes of Allah. Allah says: "Certainly, the most noble amongst you - with Allah - is he who is the most God-conscious (the one who has the most Taqwa)." not the most knowledgeable. A person possessing all the elements of Taqwa, but devoid of any academic merit is not considered flawed for that reason. All acknowledge that the Companions were of the very highest Taqwa - which is the ultimate distinction in Islam. They were as a community the best community after the Prophets But to assume that all the Companions were jurists is totally against the Qur'an:

"So if a contingent from every expedition remained behind (and not participate in Jihad), so that they could devote themselves to understanding religion they could admonish their people on their return so that they (those returning) may guard themselves against evil."
(Surah Al-Taubah : 123)

This verse instructed the Companions that one group should study while the other is engaged in battle. Undoubtedly, this assumes that there was one group who would know more than the other. Thus, Allah himself has differentiated between the scholars amongst the Companions and the non-scholars. This is Allah's law and one should seek refuge from associating this law with defects. Likewise, the explanation of the verse: "So those who deduce among them can know (and come to some conclusion)..." has also been discussed. Here again, Allah himself has differentiated between those Companions who could deduce and those who could not. Similarly, there is the statement of Prophet Muhammed *sallalahu alaihi wa sallam* :

"*May Allah give life to the servant who listens to my speech, memorizes it and then transmits it. There are some people who carry knowledge but are void of it's understanding. And there are some who carry this knowledge to those who understand it better than they.*" 141

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140 Tahreeke Azadi Fikr, by Maulana Salfi: page 133-135

141 Ahmed, Tirmidhi, Abu Dawood, Ibn Majah, Darami from Zaid ibn Thabit (Mishkaat vol. 1, page 35)

This statement was addressed primarily to the Companions. Two things are clear from this Hadith. The first is that there may be people who narrate Hadith but they may not be experts in its understanding. The second is that, not understanding the implication of the Hadith is not a defect since the Prophet *sallalahu alaihi wa sallam* blessed both groups with his dua [of life]. The truth is that there were many who profited from the magnetic company of the Prophet *sallalahu alaihi wa sallam* There were great leaders like Abu Bakr RA and Omar RA. And then, there were simple Bedouins like Aqra' bin Habis RA and Salman bin Sakhrah RA. The simple Bedouins established their honour and virtue by being Companions of the Prophet *sallalahu alaihi wa sallam* . Their virtue is such that thousands of great scholars and Mujtahids (who came after them) cannot equal their excellence, but to count these Companions in the same academic ranks as Abu Bakr, Omar, Ali and Abdullah ibn Mas'ood is denying the obvious. Shaykh ibn Qayyim has written that from among the 124,000 Companions of the Prophet *sallalahu alaihi wa sallam*, only some 130 Companions actually have recorded opinions and Fatwas.142 Again, to assume that the vast majority of the Companions fell incompetent on the basis of gaining knowledge from another Companion is prepostorous. These were people who never had impediments to learning. We have already enumerated several examples, in fact, we have evidence that some of the Companions learned from the Companions of the Companions. "Alqamah ibn Qais Nakha'ee was a Tabi'een (a companion of a Companion) and a student of Abdullah ibn Mas'ood. Several Companions sought knowledge from 'Alqamah.143 It has been established amongst scholars for Some time that the Companions practiced Taqleed. 144

The Taqleed of an individual and following one's whims and fancies

It has been discussed earlier that both, absolute Taqleed and Taqleed of an individual is permissible. However, when the level of moral integrity and compliance with the spirit of the Quran and Sunnah deteriorated, scholars issued a Fatwa confining Taqleed to an individual only. The attitude, which the scholars hoped to curb with this Fatwa, was abuse of ambiguous issues in the name of Islam and Islamic legislation. Today, the whole Muslim world is in a frenzy of this kind of permissiveness and so-called modernisation. In the name of Ijtihad and freethinking the edifice of classical Muslim scholarship is being dismantled. Academic institutions have been erected to bolster absurd interpretations legalising promiscuity, profane photography, dancing, usury and music. Articles quoting the Qur'an and Sunnah to justify such positions have proliferated throughout the Muslim world. 145 Denouncing Taqleed has been highlighted as one of the many means to achieve this profane goal. Ironically, in the effort to denounce the works of the classical scholars, these reformers have inadvertently confirmed the foresight of the very same scholars who had issued the Fatwa centuries ago. They have become the very

142 Ilaamul Muqi'een, by Ibn Qayyim: vol. 1, page 9

143 Tadhkiratul Huffaz: by Dhahabi and Hilyatul Awliyaa, by Abu Nu'aim

144 The purpose of this passage was merely to highlight that they were scholars and non-scholars among the Companions. Qadi 'Isaa ibn Abban has staled that if an opinion of a Companion is seen as against the legal process of analogy, then the Companion's opinion should be discarded. This statement has been vehemently discarded by scholars who came after him. The details of this maxim cannot be explained in this treatise.

145 Prominent writers in this campaign include Muhammed Aabduh and his student Rashid Rida

proof of unbridled pursuit of one's caprices and passions. As long as the Taqleed of an individual was the norm in Muslim communities, these ideas were not given any due attention. Vulnerability to unfounded propaganda and pseudo-intellectual claims of scholarship in the contemporary era has given rise to the acceptance that Taqleed of an individual is forbidden in Islam. The state of affairs today is that established principles of Islam and issues which are conclusively forbidden by the Qur'an and Sunnah have been targeted and treated with skepticism and even scorn.

The Taqleed of an individual and new issues

Arguments have been advanced that Taqleed of an individual impedes solutions to modern developments. The answer to such a contention is that modern issues, which demand Ijtihad, should be delegated to an expert scholar - whose Taqleed is very different from that of the lay person. such an expert scholar would be able to sift the principles of earlier Mujtahids and resolve new problems based on the same. This type of Ijtihad has been prevalent in all ages even with the concept and practice of the Taqleed of an individual. Moreover, scholars of one school may unite upon solutions to new problems, which arise. Where there is a severe need for an immediate national or social problem, scholars are given leeway and hence, they can resort to the Fatwa from another school. This is the reason why, in the Hanafi school, scholars have resorted to following the opinion of Imam Malik in issues like accepting wages and salaries for teaching the Quran, making legal provisions for divorce for a wife whose husband is lost or whose husband is impotent. This has been elaborated by Maulana Ashraf Ali Thanvi in his work *Al-Hilyatul Najizah lil Hilayatul 'Ajiza.* If there is a social need for Muslims to find latitude in a certain issue, an expert scholar may go to any of the four Madhabs to find a solution. Under no conditions is the practice of "Talfeeq" permissible, which is to use the Fatwa offered by one Imam and following another Imam in the same unit of ibaadah. Individuals are advised to seek the advice of expert scholars through a council. Taqleed of an individual, in reality, has never rendered the community incapable of resolving new issues: rather it has constantly been in a state of flux and development addressing new issues for more than a millennium.[146] It is interesting to note that some contemporary orientalists have made the same allegation.[147]

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146 The details of the methods to arrive at these solutions can be found in elaborate works like that of Ibn Abi Deen and the work of Maulana Ashraf Ali mentioned above

147 Refer to Montgomery Watt, Islamic Political Thought, Edinburgh University Press and N Coulson. A History of Islamic Law, Edinburgh University Press.

The Hanafi School of Thought and Ahadith

The contention that the Hanafi school of thought bases its Fatwas upon weak Ahadith narrations is sheer ignorance. Reflection upon the books of Hanafi Fiqh impartially would leave no room for such an assertion. The following collections of proofs for the Hanafi Fiqh illustrate the deep and profound level of Hadith scholarship current amongst the followers of the Hanafi School of jurisprudence:

Sharah Ma 'ani al-Aathar. by Imam Tahawi

Fathul Qadeer by Shaykh Ibn Hamam

Nasbul Rayah, by Shaykh Zala'ee

Al-Jawaharul An-Naqi. Shaykh Mardini

Umtadul Qari. by Shaykh 'Aini

Fathul Mulhim by Shaykh Shabbir Ahmed Uthmani

Badhlul Majhood, by Shaykh Khalil Ahmed Saharapuri

Ma'ariful Sunan by Shaykh Binnori

Faidul Bari by Shaykh Shah Anwar Khashmiri

There are some fundamental points which demand clarification. Sound Hadith are not exclusive to *Bukhari* and *Muslim,* there are many books of Hadith containing thousands of sound Hadith. The basis for a sound Hadith is its chain of narrators (isnad) and text (main). Compilers of Ahadith other than Bukhari and Muslim have established sanands (plurul of isnad) as strong as the ones present in their respective collections. Ahadith not found in the collections *of Bukhari* or *Muslim* are not deemed weak by virtue of not being included in the two collections, this would reduce the science of Hadith to total conjecture, Ahadith narrated by transmitters other than *Bukhari* and M*uslim* are present in certain books of Ahadith which are infact stronger in their isnad than even the two most sound compilations of Hadith. For instance. *Ibn Majah.* which is the sixth of the canonical books of Hadith - has transmitted Ahadith, which in some regards are superior to those of his predecessors. The standard, therefore of measuring the authenticity of any Hadith is not whether it is present in *Bukhari* or *Muslim,* but rather the standards employed by these two great scholars of Hadith themselves. If a certain Hadith meets the same criteria as Bukhari or Muslim and is not necessarily found in the two collections, this Hadith nonetheless would be regarded as sound. Understanding this principle of Hadith would dissipate the somewhat misdirected criticism against the Hanafi fiqh immediately.

One of the main reasons why there are so many differences of opinion amongst Mujtahids in particular details of the law is that the method of analyses, reasoning and deduction, vary. If there is an apparent contradiction between two Ahadith, one Mujtahid may base his opinion on the stronger of the two Hadith - even though both may be sound in narration. Another Mujtahid. however, may base his opinion on the rule that no Hadith should be discarded even though it may be weak in narration. Hence, the latter Mujtahid will attempt to reconcile both Hadith by interpreting one as the basis and the other as it's contingent, regardless of how sound or weak any of the two Hadith may be. While yet another Mujtahid may base his opinion of the Hadith upon the practice of the Companions and their followers. Thus, every Mujtahid will adopt his particular method and none can censure the other for abandoning Hadith. Imam Abu Hanifa attempted to reconcile contradictory Hadith and hence endeavored to apply every Hadith as long as it was not fabricated. Weak Hadith have also been utilised when no other Hadith was found to contradict it, even though it may be against legal reasoning and analogy, for example,

the issues of wudu breaking if one laughs in salaat and Zakaat on honey, he has favoured even though their source Hadith is weak. Ruling over the authenticity of Hadith is in itself a process of Ijtihad. This is why this issue has always been disputed amongst the scholars who analyse the narrators of Hadith. The very Hadith, which is regarded as sound and good by one Imam of Hadith, may be regarded as weak by another. There are occasions where Imam Abu Hanifa regarded one Hadith as worthy of application and the same Hadith was regarded as unreliable by another Mujtahid. Imam Abu Hanifa was a Mujtahid himself therefore he is not bound by the rulings of other Mujtahids. Occasionally a Hadith, which was transmitted to Imam Abu Hanifa with a sound narration, became weak after it passed him in the chain of narrators. In other words, the chain of narrators upto Imam Abu Hanifa is strong - but the chain from Imam Abu Hanifa to other scholars became weak because of a weak narrator entering the isnad. This sequence of events did not alter Imam Abu Hanifa's reasoning. Sometimes a Hadith may be narrated with a weak chain of narrators by one Imam, however the same Hadith can be traced back with a sound chain by another Imam. For instance, the Hadith. which says that: "Whoever has an Imam (in salaat), the Imam's recitation is enough" has been narrated with a weak chain- Then, we find that in Imam Tahawi's and Ahmed ibn Muni'ee's narrations, this Hadith is very sound. Occasionally a Hadith may be weak in its chain, but since there are several different chains narrated the Hadith, scholars will accept the Hadith as valid. This category of Hadith is known as "Good because of others". This type of Hadith is not a weak Hadith and therefore valid for application within areas of Fiqh.

There is no doubt, several Hadiths which are infact weak. The weakness of the Hadith is determined by a weak narrator present in the sanad. However, it is not necessary that every weak narrator narrated a weak Hadith each time he narrated. In the circumstance of collaborating and supporting evidence to strengthen a weak Hadith, it will be accepted and applied. For example, if there is a weak narration in a book of Hadith upon which the Companions and their Successors have acted, then this practice demonstrates that the weak narrator has indeed narrated correctly. This is why the Hadith "There is no will for the heirs (who have pre-assigned shares in inheritance)" have been accepted by all the Mujtahids - even though the Hadith is regarded weak in its narration. In fact, this process can give preference to a weak Hadith over a strong one. For example, the Prophet *sallalahu alaihi wa sallam*'s daughter, Zainab RA was married to Abu Aas who did not accept Islam immediately, but did so later on. The question amongst scholars is that did the Prophet *sallalahu alaihi wa sallam* renew his marriage contract, or did he allow them to live as husband and wife without doing so. The narration from Abdullah ibn Omar *RA* says that the contract was renewed with a new mahr, while the narration from Abdullah ibn Abbas RA says otherwise. The narration from Ibn Omar is weak whereas the one from Ibn Abbas is sound. Imam Tirmidhi, who was a master of Hadith, gave legal preference to the weak Hadith over the sound one because of the practice of the Companions.148

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148 The Jami' of Tirmidhi. The above cited example is only an example of the rule mentioned. Otherwise, the Hanafi opinion on this issue is very difficult.

The objection against the Hanafi point of view is seldom due to scholarly study rather due to a lack of understanding and in certain instances even a want of attempting to understand the Hanafi point of view. Certain scholars have fallen into this indifference. For instance. Maulana Salfi has criticized Imam Abu Hanifa's stand on the issue of offering salaat with due diligence and proper composure:

"A man was told by the Prophet *sallalahu alaihi wa sallam* to repeat his salaat three times after he had failed to complete with proper tranquility and composure. The Prophet *sallalahu alaihi wa sallam*'s words were: "Pray for you have not prayed."

This means that the salaat has no legal value which is the opinion of the Shaf'iee and the scholars of Hadith. The Shaf'iee scholars say that once the legal definition of ruku' and sajdah is known, we cannot accept the interpretation of the Hadith, nor can we comment on whether the salaat has been accepted or not."149

The Hanafis, of course make no such claim. Hanafees likewise claim that salaat should be repeated if tranquility and composure is not established in ruk'u and sajdah, as implied by the Hadith. The problem is that the respectable critic has failed to understand the Hanafis position. Imam Abu Hanifa differentiates between what is Fard (obligatory and an essential component of an act) and Wajib or what is mandatory but not an essential component of the act. Other Mujtahids do not accept this division. Imam Abu Hanifa's ruling is that those components which are Fard have to be conclusively established from the Quran and Sunnah whereas those which are Wajib are established by the sound Hadith even with a single narration (ahad Ahadith). If someone misses either a Fard (for instance recitation of the Qur'an) or misses a Wajib (like not offering salaat with tranquility) salaat will still have to be repeated. What are the legal ramifications of this great hair-splitting nuance? The distinction is that one who misses a Fard will be regarded as someone who has missed his entire salaat. All the harsh rules of a person who misses salaat - in a Muslim state - will be levied against him. This is because he has not performed salaat legally and for this person it is not a question of repeating the salaat, but rather a question of offering it. The one who misses a Wajib will not be regarded as someone who has missed his salaat, since legally he has offered his salaat - but incompletely and hence he needs to repeat it. This meaning is actually found in the Hadith itself. Imam Tirmidhi narrated that when the Prophet *sallalahu alaihi wa sallam* told this person to repeat his salaat, the Companions found this to be difficult that someone who offers his salaat in this casual manner would be regarded as one who leaves salaat. When the Prophet *sallalahu alaihi wa sallam* emphasised the importance of tranquility, after which the person repeated his salaat. the Prophet *sallalahu alaihi wa sallam* said:

"When you have done this, then you have completed your salaat. If you reduce anything from this, you will have reduced from your salaat."

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149 Tahreeke: page 32

Rifaah. the narrator of this Hadith remarked:

"This statement of the Prophet *sallalahu alaihi wa sallam* was far easier [for the Companions to tolerate] than the previous one [where he said that he had not offered his salaat]. In this statement there is the impression that not all of the salaat has been annulled." 150

The Hanafi ulama have applied the Hadith in its entirety. The first part by stating that omitting a Farad will render the Salaat incomplete and fiqh demands that the Salaat be repeated, and the second part is applied for missing a Wajib, and therefore will not be regarded. technically, as missing salaat completely. Such examples illustrate the deep level of scholarship required to understand each Fatwa of the Hanafi fiqh. Elaboration upon subtle points clearly uncovers the apathy by certain quarters to understand the reasoning for the positions of the Hanafi fiqh. Hence, the comment: "We cannot accept the interpretation of the Hadith. nor can we comment on whether the salaat has been accepted or not" is a great distortion of the viewpoint of the Hanafi school of thought. Unfortunately, jumping to conclusions concerning the Hanafi point of view without doing due diligence to the issue in question has unfortunately becomes the norm. To understand the legal Islamic reasoning, the principles which have been outlined above have to be studied, to avoid blanket statements pertaining to the Hanafi legal interpretations and from incorrectly assuming that undue preference is conferred to analogy over Hadith. Both conclusions are a tremendous injustice. There have been many non-Hanafi scholars in the past who has defended the Hanafi approach to law. Sheikh Abdul Wahhab al-Sha'raani, who although a follower of the Shaf'iee school of thought, dedicated a few chapters exclusively to reprimand the detractors of Imam Abu Hanifa's opinions:

"You should know, dear brother, that in these chapters. I will not be defending Imam Abu Haneefa merely out of sentiment or conferring the benefit of the doubt, but rather I have engaged in this endeavor after vigorous research and investigation into legal proofs and reasoning. His school of thought was the first to be documented and organised, and. as predicted by some savants, it will be the last to dissipate. In my book "The Proofs of the Legal Schools". I have discussed his opinions and the opinions of his students and I have found that their views are based on a verse, a Hadith, a quotation from a Companion or something similar to it or a correct analogy which itself had a precedent. So whoever wishes to know more about those proofs should refer to that book of mine."151

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150 Tirmidhi: chapter on the Description of Salaat

151 Al-meezanul kubraa, by Abdul wahhab Sha'raani: page 63/64 printed in Egypt by Mustafa al-Babi

Further, he refutes the idea that Imam Abu Hanifa preferred analogy to Hadith:

Know that this allegation is based on prejudice, irresponsibly ascribing blanket statements. The Qur'an says: "Certainly, hearing, seeing and thinking all will be questioned."

Then, he proceeds to relate an incident in which Sufyaan Thauri, Maqatil, Ibn Hayyan, Hammad ibn Salamah and Imam Ja'far As Sadiq (all who were great scholars of their time) came to Imam Abu Hanifa to substantiate directly whether or not he actually did give preference to analogy over Hadith. Imam Abu Hanifa responded that not only did he regard the Quran and Hadith stronger than analogy, but also he gave preference to the opinions of the Companions over analogy. He then proceeded to prove and substantiate his position for a few hours. The five great scholars departed with the following apology:

"You are the leader of scholars! Please forgive us for forming assumptions without due verification and out of ignorance."

Sheikh Abdul Wahhab al-Sha'raani proceeds to refute the position that Imam Abu Hanifa's proofs are weak and finally comes to the categorical conclusion that:

"I have, with all praise due to Allah, combed his school of thought with a fine brush and 1 have found that his school is extremely cautious and even ostentatiously virtuous."

These comments from Imam Sha'raani are merely to illustrate fundamentally that the Hanafi school is based on the Quran and Sunnah.[152]

Imam Abu Hanifa and his knowledge of Hadith

The fallacious contention that Imam Abu Hanifa either did not have access to many Hadith or that he was weak in the science of Hadith is based on prejudice and ignorance. The truth is that even non - Hanafi scholars and scholars of Hadith have testified to his acumen and expertise in the field. This short treatise does not permit the possibility of elaboration, but a selected number of quotations from a few scholars of Hadith will suffice.

Imam Ibn Juraij was a renowned scholar of Hadith. In fact. Imam Shaf'iee school of thought is derived mostly from his collections. Ibn Hajjar has narrated that when Ibn Juraij heard of Imam Abu Hanifa's death he exclaimed in an anguished voice: "What knowledge has gone!"[153]

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152 For further evidence please consult his book Al-meezanul kubraa

153 Tadhibul Tahdeeb, vol. 10, page 540

Makki Ibn Ibrahim, teacher of Imam Bukhari; and any Hadith which Imam Bukhari has narrated with only three narrators in it's chain are mostly through Ibn Ibrahim. Makki Ibn Ibrahim was also the student of Imam Abu Hanifa, he stated

"Imam Abu Hanifa was the most knowledgeable person of his time."154

It should be noted that the word for knowledge ('Ilm) in the language of the early scholars referred to the science of Hadith exclusively. Shu'ba ibn Hajjaj was known as the "Commander of the Faithful" in the science of Hadith and he was also the first scholar who specialized in the evaluation of narrators (Jarh wa Ta'deel). Speaking of Imam Abu Hanifa:

"He was, by Allah, a person with good understanding and excellent memory."

And when Shu'ba heard the news of Imam Abu Hanifa's death, he said:

"The light of knowledge has been extinguished in Kufa. They [the people of Kufa] may never see the like of him."155

Abu Dawood said that Imam Abu Hanifa was an Imam.156

Yahya ibn Mu'een. an expert in Jarh wa Ta'deel stated : "Imam Abu Hanifa was extremely reliable in Hadith as he never narrated any Hadith which he had not memorized."

Both Yahya ibn Mu'een and Ibn Sa'eed Qattan declared that they had applied many of his opinions."157

Someone once asked Yahya ibn Mu'een if Imam Abu Haneefa was reliable in Hadith to which he retorted: "Yes. very reliable, very reliable."158

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154 Narrated by Hafiz Muzzi in the footnotes of Tadhibul Tahdeeb above page 451

155 Al-Khayratul Hisaan by Ibn Hajar of Makkah, page 32 and 71, also from Injaal watan, page 8 and 17

156 Tadhkiratul Huffaz, by Dahabi: vol.1, page 160

157 Ibid: vol. 10 page 450

158 The virtues of The Great Imam (Imam Abu Hanifa), by Muwaffiq: vol.1, page 192 (printed in Hyderabad in 1321 H)

These quotations are merely for elucidation, needless to say Imam Abu Hanifa had written his book: *Kitabul Aathaar* at a time when even the earliest of canonical books of Hadith such as *Muwaata* Imam Malik, the *Musannaf of* Abdur Razzaq and Ibn Abu Shaibah had as of yet not been compiled. Imam Zaranjari confirmed that Imam Abu Hanifa wrote his book (on the quotations of the Companions) from a collection of 40,000 narrations.159 There have many scholars of Hadith who have compiled 70 books on the narrations of Imam Abu Hanifa (known as *Musnad)* which are no less voluminous than the compilations of Imam Shafiee. Ibn 'Adi , a critic of Hadith, very much antagonistic to Imam Abu Hanifa initially. He realised his lapse in judgement only later, as a expression of remorse he compiled a Musnad of lmam Abu Hanifa's narrations.160 The great expert on Hadith Nawab Siddiqui Hasan Khan wrote:

"Imam Abu Hanifa was a good scholar, a practicing and pious servant who was very devout in his worship and humble in front of Allah."

He continued to quote many merits and achievements of Imam Abu Hanifa and then he wrote: "His merits are many. Khatib of Baghdad has mentioned quite a few in his tareeqh [history]. But, the Khatib followed this with a remark, which was totally inappropriate. The Imam was not doubted for his religiousness or his academic skills. However, he was sometimes accused of being deficient in the Arabic language." 161

It should be noted that even though Nawab has quoted the comment regarding Imam Abu Hanifa's acumen in the Arabic language, objections regarding weakness in Hadith were not considered worthy of mention. In the introduction to *Al-Tajul Mukallal.* Nawab Siddiqui Hasan Khan has stated that he will discuss the scholars of Hadith, acknowledging Imam Abu Hanifa's position in Hadith. As for Imam Abu Hanifa's expertise in the Arabic language, it seems that Nawab Siddiqui Hasan Khan has narrated this from Qadi Ibn Khalikhan since the Qadi has used exactly the same words. However, the Nawab did not narrate the Qadi's statement which followed the comment which would have removed any doubts about Imam Abu Hanifa's ability in Arabic.

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159 Ibid: vol. 1 :page 95/96

160 The issue of Imam Abu Hanifa and Hadith has been dealt with by Maulana Muhammed Ali of Khandala in his book "The Great Imam and the Sceince of Hadith" and also in Arabic by Maulana Zafar Ahamed Uthmani in his book Injal Watan.

161 Al-Tajul Mukallal, by Nawab Siddiq: page 136-138 from the Bombay translation page 119 (printed 1383)

This comment is based on a famous incident. The famous grammarian, Abu Amr ibn 'Ala went to Imam Abu Hanifa and asked him about a killing, which resembled murder. Imam Abu Hanifa told him that there were no grounds for legal retaliation (Qisas). Abu Amr asked him if that was the case even though he killed him with a catapult. The Imam replied in Arabic: ....

Later, people objected to Imam Abu Hanifa's reply and claimed that the correct reply should have been: ....

The truth is that in certain dialects, the phrase was spoken differently. Qadi ibn Khalikhan has narrated that the dialect of Imam Abu Hanifa was that of Kufa, which the people of Kufa accepted without hesitation. Hence, the comment on Imam Abu Hanifa's acumen in Arabic or the lack of, is unfounded.

Inertia in Taqleed

Extremists exist within adherents of Taqleed and its antagonists; both, condemning the practice of Taqleed is reproachable as is remaining rigid in Taqleed. For example believing that the Imams and Mujtahids were infallible and that they held a position as legislators. Discarding a sound Hadith merely on the basis that ones Imam has not ruled concerning that issue, in this regard, raising the finger of testimony while sitting down in the second and fourth rak'at of any salaat during the recitation of Tashahhud has been proven by several sound Hadith. This was the Sunnah of the Prophet *sallalahu alaihi wa sallam* . Rejecting this Sunnah by claiming that Imam Abu Hanifa did not rule in reference to this is also fanatical adherence to ones Madhab. The Qur'an and Sunnah condemn this type of lethargic Taqleed. Likewise performing academic gymnastics in order to reconcile a Hadith with the position of the Imam to the extent that the manifest understanding of the Hadith is distorted is similarly condemned. However, this may be subjective more than objective on occasions where the scholar in question may feel satisfied while others may not. It is similarly blameworthy, that an expert scholar discovering a sound Hadith, which is not contradicted by another equally sound Hadith, continues to follow the Imam's opinion. Assuming that only one Imam's opinion is correct and all others' opinions are false and invalid, is erroneous. The truth is that all the Mujtahids fulfilled the conditions for Ijtihad and exercised their skills to reach conclusive judgments. In the event that certain opinions are wrong, the Mujtahids will be rewarded for their exertion as slated in the famous Hadith. The correct approach is to assume that the Imam's opinion is correct with a possibility of error and the opinions of other scholars may be incorrect with a possibility of being correct. Presenting the differences of the Imams in a guise that it engenders friction and commotion within the Muslim community is reprehensible. Many of the differences between the Imams are merely based on which is the more preferred action. Very few differences arise over the classifications between haram and halal for the simple reason that such issues are not usually subject to Ijtihad. For instance, the issues of raising hands when going into ruku'; reciting Ameen aloud and whether to place the hands on the navel or the chest are all issues attempting to establish the action which is of more virtue and what is less: all are agreed that the above actions are permissible and the nonperformance of the above actions would not invalidate Salaat. To present these differences in a manner which leads to instigating bitter sentiments is

certainly haram. Differences concerning what is halal and what is haram are issues for scholarly circles only, opening such issues to the populace, where there exists the anxiety of friction and commotion, is not the intent of the Mujtahids who differed with each other. This is a despicable act, which has been highlighted by Imam Shatibi in his masterpiece *Al-Muwafiqaat.*[162]

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162 Imam Shatibi Al-Muwafiqaat (vol. 4: pages 220 to 240)

THE FINAL WORD

Polemical debate was not the intent of this exposition. Rather it was an attempt to clarify the practice of millions of Muslims around the globe. An attempt has been made to offer evidence justifying the actions of the Muqallids so that people who often criticise the practice of Taqleed would be more cautious in their conclusions. If, inadvertently, any word or phrase offended any one person or group, I would like to offer my sincere apologies. For whatever reason, the antagonists of Taqleed may feel that their position does not deserve re-evaluation, that is their prerogative. However, to engage in classifying the great scholars and Imams as legislatures or innovators; or condemning those who follow the Imams as polytheists and innovators needs to be renounced. The famous scholar of Hadith Shaykh Nawab Siddiq Hasan from his work llqaa us Sunnan bi llqaail Mihan states:

"One of the favours which Allah has bestowed upon me is that I regard everybody within the Ahle Sunnah wal Jamaah as being saved and protected from Hell. This I hold regardless of whether a person is a Hanafi, a Shaf'iee, a Maliki, a Hanbali, a person following the literal Hadith or someone who follows suluk [sufismj. This I hold even though I know that some of the opinions of these scholars are against the proofs and evidences offered for some positions are very weak in their reasoning. This ruling is for the great majority of their opinions and not against the few exceptions, explanations concerning the exceptions can be found in the book of *Jalbal Manfa'ah.* Accusing the predecessors of going against the Sunnah is shedding the blood of justice. Yes. those who follow their Imam's opinions even after they find out that they have strayed away from the Hadith are guilty of being inert and lethargic. Even then, I don't regard them as being misguided, nor do I consider that salaat is invalid behind them. I do not consider them as non-believers."

He continues:

"Having a difference of opinion in issues of the rituals of worship, social contracts and other areas of law does not justify denouncing people who differ, to be non-Muslims. The most that could be said is that there has been an error in judgement and discretion (Ijtihad), which is recognised by scholars. I believe that if someone acted out of this error, then Allah will forgive him if he was sincere and unbiased in his approach to the issue. However, if prejudice and inertia were influencing elements in that person's decision, then I am afraid there may be grave consequences as this would lead to hypocrisy and severing lies with Allah and His Messenger. However, it is difficult to believe that a Muslim would resort to such an atrocity. We can only judge by the apparent and Allah knows that which is hidden" 163

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163 Extracted from Faran Monthly (May 1963) by permission of Mahir Qadiry, the editor of Faran

In this precarious age where Muslims are inflicted with problems and dilemmas across the globe, there can be nothing more detrimental for the Ummah than bickering over these particular and subsidiary details of law. What can be more sacrilegious than condemning each other as non-Muslims and polytheists because of non-essential differences and innocuous details. It would indeed be a great tragedy that while differing upon the subsidiaries of the Deen the enemies of Islam exploit these very differences to dismantle the fundamentals upon which the great edifice of Islam rests, which has withstood external onslaughts for more than fourteen hundred years. History bears witness that it was not the enemy from beyond the Muslim boundaries who destroyed Islam and Muslims, rather periodical internecine feuds precipitated abject deterioration and eventual collapse".[164] Ironically it seems to be divisiveness that appears to be the outcome of attempting to "redress the errors" of the four Madhabs rather than harmony between the Muslims, which is the oft-quoted motive cited by some contemporary authors. Indeed if this is the outcome then it begs the question for what possible motive is such u course of action perused, especially when the Ummah is facing crisis the gravity of which has never as yet been witnessed. In all sincerity and seriousness disagreeing in the fundamentals of Islamic law amongst the masses is a luxury which the Ummah at the present juncture can no longer afford. Unfortunately while the Muslims are preoccupied with internal strife it appears that the enemies of Islam are exploiting this opportunity to the full.

We pray that Allah guides us on the right path; that He shows us the truth as the truth is and allows us to follow it and that He shows us falsehood as falsehood is and allows us to abstain from it. We also pray that He divert our religious zeal and efforts from these internecine arguments towards aims and goals, which will elevate Islam and the Muslims.

"Our last call is that definitely all praise is due to Allah, the Lord of the worlds."

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164 For example it was the armies of the Muslims who finally subjugated the Mongols after the armies of Europe were helpless before the invading armies at the battle of Ain-e-Jalut (Goliath's spring) in September 1260C.E.